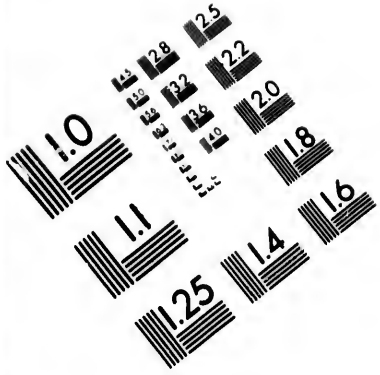

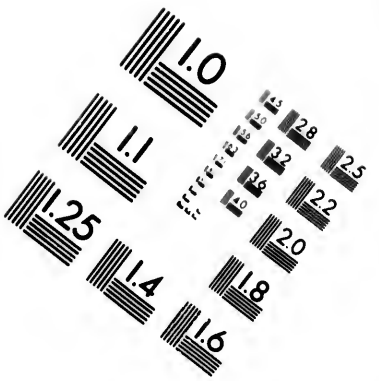

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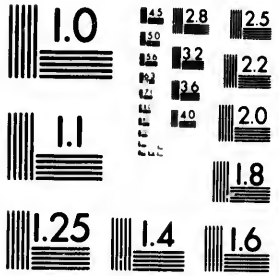

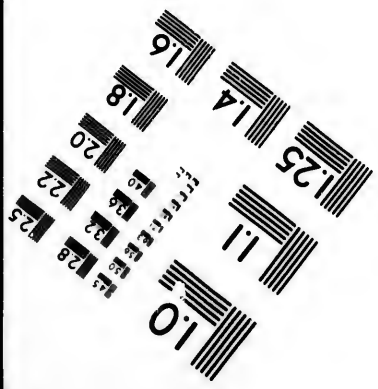

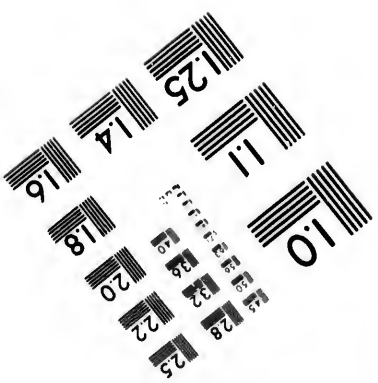

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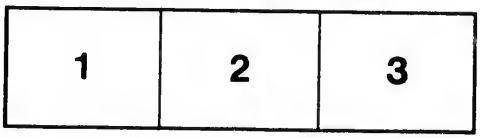

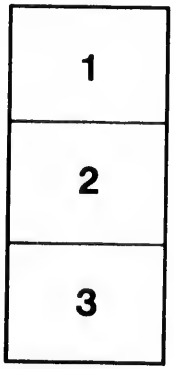

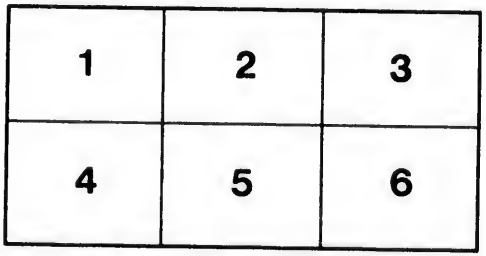

DIGEST

OF

REPORTED CASES TOUCHING

THE CRIMINAL LAW OF CANADA;

WITH

REFERENCES TO THE STATUTES

AND

AN INDEX.

BY

THOMAS P. FORAN, M.A., B.C.L.,

(Compiler of Foran's Code of Civil Procedure.)

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PREFACE.

It has been the compiler's aim to make of this book a work of ready reference for those who are called upon to preside at or practice in our Courts of Criminal Jurisdiction; and it is hoped that the arrangement he has adopted, the Tables at the beginning, and the Index at the end of these pages will be found suitable to the accomplishment of that object.

Aylmer, P. Q., April, 1889.

TABLE OF CONTENTS.

TABLE OF ABBREVIATIONS.

App. R. ..... Appeal Reports, Ontario.
C. P ..... Upper Canada Common Pleas Reports.
E. T ..... Easter Term, Ontario.
H. T ..... Hilary " "
K. B ..... King's Bench.
L. C. J ..... Lower Canada Jurist.
L. C. L. J. ..... " " Law Journal.
L. C. R ..... " " Reports.
L. J ..... Upper Canada Law Journal, old series.
L. J., N. S. ..... " " " " new "
L. N ..... Legal News.
M. L. R. ..... Montreal Law Reports.
N. S. Rep. ..... Nova Scotia Reports.
O. R., Ont. Rep. ... Ontario Reports.
O. S ..... Upper Canada Queen's Bench Reports, old series.
P. C ..... Privy Council
P. R ..... Practice Reports, Ontario.
Q. B ..... Queen's Bench; or, when preceded by a number, Upper Canada Queen's Bench Reports, new series.
Q. B. R. ..... Dorion's Queen's Bench Reports.
Q. L. R. ..... Quebec Law Reports.
Ramsay, A.C. ..... Ramsay's Appeal Cases.
R. S ..... Revised Statutes of Canada.
Rob. & Jos. Dig. ... Robertson & Joseph's Digest, Ontario.
S. C. R ..... Supreme Court of Canada Reports.
Tay ..... Taylor's Upper Canada Reports.
U. C. R. ..... Upper Canada Reports.

ERRATA.

Page 1, last line, add : " *O'Farrell, exp.*, 13 Q. L. R.; 10 L. N. 397."
" 4, last line, add : " 15 Ont. Rep. 398."
" 38, 10th line, for " *Comellier* " read " *Coruellier.*"
" 59, 5th line from bottom, dele " *that.*"
" 118, 18th line, add : " 12 P. R. 411."
" 119, 9th line from bottom for " Q. R." read " Q. B."
" 157, 6th line for " 122 " read " 222."
" 164, 13th line from bottom read " 10 Ont. Rep."

TABLE OF CASES.

THE REFERENCES ARE TO THE MARGINAL NUMBERS.

TABLE OF STATUTES.

THE REFERENCES ARE TO THE MARGINAL NUMBERS.

CRIMINAL DIGEST.

CRIMINAL DIGEST.

I.—CRIMINAL INFORMATION.

1.—The applicant in person moved for a criminal information against one J. H. W. for an alleged libel, and his application was rejected in consequence of his having omitted to file the libel complained of with his motion, and affidavits in support thereof. The present application was a renewal of the former one, and precisely the same in every particular, excepting that the omission to file the libel complained of was supplied.

Caron, J., after consulting with his brother judges,

Held, that the criminal information obtained in Lower Canada, and that the duties and powers of the clerk of the crown in such cases were analagous to those of the master of the crown office in England. *Gugy, ex parte*, 8 L. C. R. 353; 1 L. C. R. 51, Q. B.

2.—But *held*, that a rule for such information, once discharged for irregularities, could not be renewed by amendment, and also that the applicant could not move for the rule in person. *Ibid.*

3.—And *held*, also, that the applicant must declare that he waived all other remedies, civil and criminal, and that the court, being in the position of a grand jury, will require satisfactory evidence of the guilt of the accused, such as should be presented to a grand jury. *Ibid.*

II.—INTRODUCTORY.

1.—On a writ of *habeas corpus*, issued to produce the body of a person imprisoned under a conviction before two justices of the peace for selling tickets in and belonging to a foreign lottery,

Held, that the statute, 14 Geo. III. c. 83, introduced into this province that portion of the criminal law of England only which was of universal application there, and not such parts as were merely municipal and of local importance, and by that statute the 9 Geo. I. c. 19 and 6 Geo. II. c. 35, which impose certain penalties on persons selling tickets in a foreign lottery, have been made to form part of the criminal law of Lower Canada. *Rousse, ex parte*, S. R. 21; K. B. 1825, R. S. c. 144.

5.—The Legislature of Ontario having passed an Act to regulate shop and tavern licenses, 32-33 Vict. c. 32, under the power given to it by the B. N. A. Act, s. 92, ss. 9, 16,

Held, that they had power under sub-section 15 to enact that any person who, having violated any of the provisions of the Act, should compromise the offence, and any person who should be a party to such compromise, should on conviction be imprisoned in the common gaol for three months; and that such enactment was not opposed to section 91, sub-section 27, by which the criminal law is assigned exclusively to the Dominion parliament. *Regina* v. *Boardman*, 30 Q. B. 553.

6.—On a trial for bigamy,

Held, that American authorities could not be quoted. *Regina* v. *Creamer*, 10 L. C. R. 404, Q. B. 1860.

7.—An indictment was found against the defendants in the High Court of Justice at its sittings of Oyer and Terminer and gaol delivery and on being called upon to plead, the defendants demurred to the indictment. A writ of *certiorari* was subsequently obtained by the defendants, in obedience to which the indictment, demurrer and joinder were removed to the Queen's Bench Division. Upon the return, the court took out a sidebar for a *concilium*, and the demurrer was set down for argument. A motion was made by the defendants to set aside the proceedings of the crown, on the ground that they should have been called upon to appear and plead *de novo* in this division.

Held, WILSON, C.J., dissenting, that the court of assize of Oyer and Terminer and general gaol delivery is now, by virtue of the Judicature Act, the High Court of Justice: that the indictment was found, and the defendants appeared and demurred thereto in the High Court of Justice; and that it was not necessary to plead *de novo* in the indictment.

Per ARMOUR, J., and O'CONNOR, J.—The Supreme Court of Judicature is not properly a court, and ought more properly to have been called the Supreme Council of Judicature. The divisions of the High Court are not themselves courts, but together substitute the High Court, which is just divided for the convenience of transacting business; and the judges sit as judges of the High Court, and exercise the jurisdiction and administer the jurisdiction of the High Court.

The recognizance entered into by the defendants on the removal of the proceedings to this division, provided that they should "appear in this court and answer and comply with any judgment which may be given upon or in reference to a certain indictment,

etc., or upon or in reference to the demurrer to such indictment, and plead to said indictment if so required."

Per WILSON, C.J., *semble*, that the practice and procedure before the Judicature Act should be maintained in its entirety; though possibly it might be varied by agreement. By the recognizance, the defendants had not agreed to vary it, but they might thereunder elect to appear and answer to the indictment or to appear and argue the demurrer; and they, being ready to appear and answer the indictment, would fully perform the condition of the recognizance by so doing. *Regina* v. *Bunting, et al.*, 7 Ont. Rep. 118 Q. B.

8.—*Held*, that the crown, by prerogative right, could issue a commission to the judge of the provisional judicial district of Algoma to hold a court of Oyer and Terminer, and general gaol delivery, for trial of felonies, etc.

Semble, per WILSON, J., that such judge having by section 94 of C. S. U. C. c. 128, the same powers and duties as a county judge in Upper Canada, he might have been appointed under C. S. U. C. c. 11, s. 2, to act as a commissioner. *Regina* v. *Amer, et al.*, 42 Q B. 391. See *In re Boucher*, 4 App. R. 191.

9.—*Held*, that the police court of the city of Toronto is a court of justice, within 32-33 Vict. c. 21, s. 18, and that the prisoner was properly convicted of stealing an information laid in that court. *Regina* v. *Mason*, 22 C. P. 246; R. S. c. 164, s. 15.

10.—The Provincial Legislatures have the power to appoint justices of the peace and police magistrates. *Regina* v. *Bush*, 8 Can. Law Times, 131, Ont.

III.—PERSONS CAPABLE OF COMMITTING CRIMES.

11.—A person accused of perjury cannot have accomplices, and is alone responsible for the crime of which he is accused. *Regina* v. *Pelletier*, and *Regina* v. *Tellier*, 1 R. L. 565, Q. B. 1870.

12. An advocate who has advised a client to oppose a writ of execution, even by force, believing it to be null, cannot be convicted on a criminal information for such advice. *Regina* v. *Morrison & Pagnuelo*, 3 R. L. 525, Q. B. 1872.

13.—A soldier convicted of bigamy is not thereby discharged from the service to which he belonged. *Regina* v. *Creamer*, 10 L. C. R. 404, Q. B. 1860.

14.—Soldiers guilty of felony must first be held to answer to the criminal tribunals of the country, proceeding as under the common law of England, before a military court under the Mutiny Act, and the Articles of War, can legally take cognizance of the charge. *McCulloch, ex parte*, 4 L. C. R. 467, Q. B. 1853.

15.—A plea to a complaint of having maliciously injured property, that one of the defendants acted as a municipal officer and the other as his assistant, suffices to oust the jurisdiction of the justice. *Kenney* v. *Berryman*, 9 Q. L. R. 277; R. S. c. 168, s. 59.

16.—Where an indictment charged defendant with procuring certain persons to cut trees, the property of A., B., and C., growing on certain land belonging to them,

and the evidence shewed that the land belonged to them and to another as tenants in common,

Held, that a conviction could not be supported. *Regina* v. *Quinn*, 29 Q. B. 158; R. S. c. 168, s. 59.

17.—The jurisdiction of the justices to hear the case summarily, is ousted when a *bona fide* claim of title is set up, and they must hold their hands. *Regina* v. *O'Brien*, 5 Q. L. R. 161, 1879; R. S. c. 168, s. 59.

18.—Where the defendant had been convicted, under 32-33 Vict. c. 22, s. 60, of trespass to land, and it appeared on the evidence before the magistrate, set out below, that there was a dispute between the parties as to the ownership,

Held, that it was a case in which the title to land came in question, and that the defendants had been improperly convicted, even though the magistrate did not believe that the defendants had a title, it not being within his province to decide on the title, but merely on the good faith of the parties alleging it. *Regina* v. *Davidson, et al*, 45 Q. B.: R. S. c. 168, s. 59.

19.—The defendants were convicted of a trespass under C. S. U. C. c. 105, as amended by 25 Vict. c. 22. They appealed to the sessions, which affirmed the conviction. The conviction was then brought into this court, and a motion was made to quash it on the ground of want of jurisdiction in the convicting justice, inasmuch as it appeared by the evidence, and by affidavits filed, that the defendants acted under a fair and reasonable supposition that they had the right to do the acts complained of within the meaning of the above statutes.

Held, that that was a fact to be adjudicated upon by the convicting justice upon the evidence, and therefore, that a *certiorari* would not lie for want of jurisdiction. *Regina* v. *Malcolm, et al*, 2 Ont. Rep. 511, Q. B.; R. S. c. 168, s. 59.

20.—On error brought, it was

Held, that on the record of a conviction for murder, the authority of the justice sufficiently appeared without any statement whether a commission had issued or had been dispensed with by order of the governor; for such courts are now held, not under commission, but by virtue of the C. S. U. C. c. 11, as amended by 29-30 Vict. c. 40; and as the record sufficiently shewed the absence of any commission, it must be presumed that it seemed best to the governor not to issue one.

Semble, that if the court had been held by a Queen's counsel or county court judge, it might have been necessary to shew whether a commission had issued or not, as he would derive his authority from a different source in each of the two cases.

Semble, also, that if the caption had been defective, it might have been rejected altogether, under C. S. U. C. c. 99, s. 52. *Whelan* v. *Regina*, 28 Q. B. 2.

21.—A conviction for assault may be pleaded in bar to any other proceeding, civil or criminal, for the same causes, but it must be pleaded in order to avail. *Cullahan* v. *Vincent*, 3 L. N. 154; *Simard* v. *Marsan*, 2 L. N. 333: contra: *Marchessault* v. *Gregoire*, 18 L. C. J. 140; 4 R. L. 54, Nos. 54, 55, *post*; R. S. c. 178, ss. 74, 75.

IV.—OFFENCES.

1. Abduction—

22.—Where it appeared that the girl, under sixteen years of age, had left her guardian's house for a particular purpose, with his consent, it was held that she did not cease to be in his possession under the statute. *Regina* v. *Moudelet*, 21 L. C. J. 154; R. S. c. 162, s. 44.

23.—The indictment should set forth the interest of the woman in the property.

It is a substantial fact which the prisoner has a right to rebut.

He cannot do so unless the nature of the interest is disclosed.

When the interest is set forth in the indictment, it must be proved as laid.

Verbal evidence of interest in property cannot, generally, sustain such an indictment. *Regina* v. *Kaylor*, 4 L. N. 196; 1 Q. B. R. 364; 26 L. C. J. 36; R. S. c. 162, s. 42.

24.—It is not necessary for the crown to prove that the prisoner knew of the interest of the female in the property. *Ibid.*

25.—On a trial for taking an unmarried girl aged less than sixteen years out of the possession of her guardian, evidence of cruel treatment of the girl by the guardian is inadmissible.

Interference of a witness on the way to court to give evidence in order to prevent her testimony from being given, is a contempt of court.

Secondary evidence of the age of the child abducted may be permitted to go to the jury.

Where a child was taken from motives of benevolence, from a barn wherein she had sought refuge, the barn not being on the property or premises of the guardian, and was then placed by the persons who had come to her relief in the charge of defendant as secretary of a society for the protection of women and children, the secretary could not be found guilty of taking out of the possession of the guardian. *Regina* v. *Hollis*, 8 L. N. 229; R. S. c. 162, s. 44.

2. Abortion—

26.—The prisoner, with intent to procure abortion, supplied a pregnant woman with two bottlesful of Sir James Clarke's Female Pills, with directions to take twenty-five at a dose, and said that it would have that effect. The pills contained oil of savin, an article used to procure abortion, and it was said that a bottleful would contain about four grains, but the evidence was not very clear as to this. It was in evidence that such a quantity would be greatly irritating to a pregnant woman, and might possibly procure an abortion, and that oil of savin in any dose would be most dangerous to give to a woman in that condition,

Held, under the circumstances, that there was a supplying of a noxious thing within the meaning of the Act, with the intent to procure an abortion. *Regina* v. *Stitt*, 30 C. P. 30; R. S. c. 162, s. 47.

3. Arson—

27.—A building used by a carpenter, who was putting up a house near it, as a place of deposit for his tools and window frames which he had made, but in which no work was carried on by him, was

Held, not "a building used in carrying on the trade of a carpenter" within 4-5 Vict. c. 26, s. 3. *Regina* v. *Smith*, 14 Q. B. 546; R. S. c. 168, s. 4.

28.—The remains of a wooden dwelling house, after a previous fire, which left only a few rafters of the roof, and injured the sides and floors so as to render it untenable, and which was being repaired, was

Held, not a building within section 7 of 32-33 Vict. c. 22, so as to be the subject of arson. *Regina* v. *Labadie*, 32 Q. B. 429; R. S. c. 168, s. 8.

29.—Upon an indictment for arson, the prisoner was proved to have requested or procured one S. to set fire to the house, telling S. that he had his house insured, and asked if he would not set fire to it. He also stated that "his insurance would run out next day, and that he, S., must set the house on fire that night." The evidence also shewed that a sum had been awarded the prisoner for his insurance, in payment of which he was seen to have a bill of exchange on London in his possession,

Held, that under C. S. C. c. 93, s. 4, it is necessary, where the setting fire is to a man's own house, to prove an intent to injure and defraud, although the words "with intent thereby to injure or defraud any person," introduced into the Imperial Act, are omitted in ours. The indictment alleged that the prisoner did incite, etc., one F. S., the said felony in form aforesaid to do and commit, with intent then and there to injure and defraud a certain insurance company called, etc.,

Held, necessary to prove that the premises were insured, but Draper, C.J., was of opinion that the indictment would have been sufficient if it had ended with the words "to injure and defraud," the insurance

being a matter of proof, and that the prisoner's statement or admission, was evidence sufficient to support the indictment. Hagarty, J., dissenting. *Regina* v. *Bryans*, 12 C. P. 161; R. S. c. 168, s. 4.

30.—In an indictment for arson, it is unnecessary to charge any intent, as our statute (differing from the English Act) does not make the intent part of the crime. This omission, however, if a defect, would not be ground for a new trial, under C. S. U. C. c. 113. *Regina* v *Greenwood*, 23 Q. B. 250; R. S. c. 168, s. 4; c. 174, s. 116.

31.—But though the indictment is sufficient without alleging any intent, an intent to injure or defraud must be shewn on the trial. *Regina* v. *Cronin*, 36 Q. B. 342, H. T., 1875.

32.—The prisoner being indicted for unlawfully and maliciously attempting to burn his own house by setting fire to a bed in it, it appeared in evidence that the dead body of a woman was in the bed at the time: that her death had been caused by violence: that she had been recently delivered of a child, whose body had been found in the kitchen; and that she had lived in the house since it had been rented by the prisoner, who frequently went there at night. It was also shewn that the prisoner had been indicted for the murder of this woman and acquitted, and the record of his acquittal was put in. This evidence was objected to as tending to prejudice the prisoner's case: but,

Held, admissible, for the house being the prisoner's, it was necessary to show that his attempt to set fire to it was unlawful and malicious, and these facts might satisfy the jury that the murder being committed by

another the prisoner's act was intended to conceal it. *Regina* v. *Greenwood*, 23 Q. B. 250; R. S. c. 168, s. 4; c. 174, s. 116.

33.—On an indictment for attempt to commit arson, the evidence shewed that one W., under the direction of the prisoner, after so arranging a blanket saturated with oil, that if the flame were communicated to it the building would have caught fire, lighted a match, held it till it was burning well, and then put it down to within an inch or two of the blanket, when the match went out, the flame not having touched the blanket,

Held, that the prisoner was properly convicted under 32-33 Vict. c. 22, s. 12. *Regina* v. *Goodman*, 22 C. P. 338; R. S. c. 168, s. 10.

34.—Defendant was charged with having set fire to a building, the property of one J. H., "with intent to defraud." The case opened by the crown, was that the prisoner intended to defraud several insurance companies, but the legal proof of policies was wanting and an amendment was allowed by striking out the words "with intent to defraud." The evidence shewed that different persons were interested as mortgagees of the building, a large hotel, and J. H. as owner of the equity of redemption. It was left to the jury to say whether the prisoner intended to injure any of those interested. They found a verdict of guilty,

Held, that the amendment was authorized and and proper, and the conviction was warranted by the evidence. *Regina* v. *Cronin*, 36 Q. B. 342, H. T. 1875; R. S. c. 168, s. 4; c. 174, s. 143.

4. Assault.

35.—The prisoner, who had been committed for extradition, was charged with assault, with intent to

commit murder, in that he had opened a railway switch with intent to cause a collision, whereby two trains did come into collision, causing a severe injury to a person on one of them,

Held, that this was not an "assault" within the statute. In *re Lewis*, 6 P. R. 236; R. S. c. 168, s. 37; c. 174, s. 191; c. 162, s. 25. See *Regina* v. *Bonter*, 30 C. P. 19; *Regina* v. *McDonald*, 30 C. P. 21, *note*.

36.—The conviction before a police magistrate, charged that the prisoner did "unlawfully and maliciously cut and wound one M. K., with intent to do her grievous bodily harm,"

Held, on motion to discharge the prisoner on *habeas corpus*, affirming the judgment of Hagarty, C.J., 8 P. R. 21, that if not sufficient to charge a felony under section 17 of 32 Vict. c. 20, D., it was a good conviction for a misdemeanour under section 19, the unnecessary statement of the intent being immaterial. *In re Boucher*, 4 App. R. 191; R. S. c. 162, ss. 13, 14.

37.—The police magistrate has jurisdiction under the constitution to try either of these offences. *Ibid.* R. S. c. 178, s. 73.

38.—In an action of damages for assault,

Held, reversing the judgment of the court below, that words in the declaration, charging the defendant with assault and battery with intent to do grievous bodily harm, did not necessarily constitute an action for felony. *Lamothe* v. *Cheralier, et al.*, 4 L. C. R. 160, Q. B. 1854.

39.—The defendants were convicted for unlawfully assaulting F. V. "by standing in front of the horses

and carriage driven by the said V., in a hostile manner, and thereby forcibly detaining him, the said V., in the public highway against his will,"

Held, that the conviction was bad in stating the detention as a conclusion and not as part of the charge, which, as shewn by the conviction, was merely standing in front of the horses, and did not amount to an assault. *Regina* v. *McElligott & Meyers*, 3 Ont. Rep.; 535 Q. B.; R. S. c. 162, s. 36.

40.—A party accused of assault with intent to rob, may be found guilty of simple assault. *Regina* v. *O'Neill*, 11 R. L. 334; 8 Q. L. R., 3; R. S. c. 174, ss. 191, 192.

41.—Defendant was convicted of an assault upon a "constable while in the due execution of his duty." At the time the constable was engaged in the service of civil process,

Held, (McDonald, C.J., & McDonald, J., dissenting) that though serving civil process the constable came within the meaning of the words "peace officer," and defendant was properly convicted. *Regina* v. *Lantz*, 7 Can. Law Times 50, N. S.; R. S. c. 162, s. 34.

42.—Under C. S. C. c. 99, s. 66, there can be no conviction for an assault unless the indictment charges an assault in terms, or a felony necessarily including it, which manslaughter is not. Where, therefore, the indictment was for manslaughter, in the form allowed by that Act, charging that defendants "did feloniously kill and slay" one D.,

Held, that a conviction for assault could not be sustained. *Regina* v. *Dingman & Corwin*, 22 Q. B. 283; R. S. c. 174, s. 191.

43.—*Held*, following *Regina* v. *Bird*, 2 Den. C. C. 94, and *Regina* v. *Phelps*, 2 Moo. C. C. 240, that on an indictment for murder the prisoner cannot be convicted of an assault under 32-33 Vict. c. 29, s. 51. *Regina* v. *Ganes*, 22 C. P. 185 ; R. S. c. 174, s. 191.

44.—On an indictment for murder in the statutory form, not charging an assault, the prisoner, under 32-33 Vict. c. 29, s. 51, cannot be convicted of an assault ; and his acquittal of the felony is therefore no bar to a subsequent indictment for the assault. *Regina* v. *Smith*, 34 Q. B. 552 ; R. S. c. 174, s. 191.

Per WILSON, J. In this case there could have been no conviction for the assault, because the evidence upon the trial for murder shewed that it did not conduce to the death. *Ibid.* R. S. c. 174, s. 191.

45.—Upon an indictment for shooting with a felonious intent, the prisoner, if acquitted of the felony, may be convicted of common assault. *Regina* v. *Cronan*, 24 C. P. 106 ; R. S. c. 174, s. 191.

46.—To discharge a pistol loaded with powder and wadding at a person within such a distance that he might have been hit, is an assault.

It was *held* here, that there was sufficient evidence of the prisoner having done this, and a conviction for assault was upheld. *Ibid.* R. S. c. 162, s. 13.

47.—An offence against the Dominion Elections Act by committing an aggravated assault upon the day of voting, cannot be tried summarily. *Regina* v. *Larouche*, *Regina* v. *Lemieux*, 5 Q. L. R. 261, 1877 ; R. S. c. 178, s. 73.

48.—*Scire facias* upon a recognizance to keep the peace and be of good behaviour towards Her Majesty and

all her liege subjects, and especially towards H. M., charging an assault and breach of the peace.

For the crown a judgment of the court of quarter sessions was proved, affirming a conviction of defendant before magistrates on a charge of assaulting H. M. "by using insulting and abusive language to him in his own office, and on the public street, and by using his fist in a threatening and menacing manner to the face and head of the said H. M,"

Held, sufficient proof of a breach of the peace,

Held, also, that defendant was properly convicted, for the offence charged amounted to an assault. *Regina* v. *Harmer*, 17 Q. B. 555; R. S. c. 162, s. 36.

49.—C. S. C. c. 91, probably applies only to common assaults, etc. A charge of assaulting and beating is not a charge of aggravated assault, and a complaint of the former will not sustain a conviction of the latter, though when the party is before the magistrate, the charge of aggravated assault may be made in writing and followed by a conviction therefor. *In re McKinnon*, 2 L. J. N. S. 324; R. S. c. 162, s. 36.

50.—The court of quarter sessions has power, in the case of an assault, to pronounce a sentence of fine and costs of prosecution, and imprisonment in case of default. *Ocens* v. *Taylor*, 19 C. P. 49; R. S. c. 162, s. 36.

51.—On motion to quash a conviction by two justices of the county of Norfolk for an assault,

Held, 1st. That stating the offence to have been committed at defendant's place in the township of Townsend was sufficient, for C. S. U. C. c. 3, s. 1, s-s. 37, shows that township to be within the county.

2nd. That it was unnecessary to shew on the face of the conviction that complainant prayed the magistrates to proceed summarily, for the form allowed by C. S. C. c. 103, s. 50, was followed, and if there was no such request, and therefore no jurisdiction, it should have been shewn by affidavit.

3rd. That it was clearly no objection that the assault was not alleged to be unlawful. *Regina* v. *Shaw*, 23 Q. B. 616; R. S. c. 178, s. 73.

52.—The prayer for summary jurisdiction should appear on the face of the conviction, even if not necessary on the face of the information. *In re Switzer & McKee*, 9 L. J. 266; R. S. c. 178, s. 73.

53.—At the Quarter Sessions the prisoner was found guilty on an indictment charging that she, on, etc., in and upon one B., in the peace of God and of our Lady the Queen then being, unlawfully did make an assault, and him, the said B., did beat and illtreat, with intent him, the said B., feloniously, wilfully, and of her malice aforethought, to kill and murder, and other wrongs to the said B. then did, to the great damage of the said B., against the form of the statute in such case made and provided, and against the peace, etc. A count was added for common assault. The evidence shewed an attempt to murder, but it was moved in arrest of judgment that the court had not jurisdiction, for that it was a capital crime, under C. S. C. c. 91, s. 51,

Held, that the indictment did not charge a capital offence under that section, nor an offence against any statute, but that the conviction might be sustained as for an assault at common law. *Regina* v. *McElroy*, 20 Q. B. 344; R. S. c. 162, s. 34.

54.—Where the defendant had been convicted and punished before the recorder's court,

Held, that this was no bar to the plaintiff's action for damages for the same assault. *Marchesault & Gregoire*, 18 L. C. J. 140, and 4 R. L. 541; R. S. c. 178, s. 75. No. 21 *ante*.

55.—Where a person is charged with a criminal offence, and receives a certificate of acquittal, such certificate will operate as a bar to any civil process for the same matter. *Julien* v. *King, et al.*, 17 L. C. R. 268; R. S. c. 178, ss. 74, 75. No. 21 *ante*.

56.—Where a man is himself assaulted by a person disturbing the peace in a public street, he may arrest the offender and take him to a peace officer to answer for the breach of the peace. *Forrester* v. *Clark*, 3 Q. B. 151; R. S. c. 174, s. 24.

5. Assault, Indecent—

57.—Upon an indictment charging that the prisoner "violently and feloniously did make an assault, and her, the said R., then violently * * did ravish * * ." The prisoner may be found guilty of an assault with intent to commit rape. *Regina* v. *John*, 11 L. N. 313, Sup. Ct.; 8 Can. Law Times 88; R. S. c. 174, s. 183.

58.—The prisoner was indicted for an indecent assault on the person of a boy aged about thirteen years. The evidence clearly showed the consent of the boy, and that he denounced the fact only when questioned by his father.

It was *held*, that the prosecution could not be sustained. *Regina* v. *Laprise*, 3 L. N. 139, 1880.

59.—Upon the trial of the prisoner, a school teacher, for an indecent assault upon one of his scholars, it appeared that he forbade the prosecutrix telling her parents what had happened, and they did not hear of it for two months. After the prosecutrix had given evidence of the assault, evidence was tendered of the conduct of the prisoner towards her, subsequent to the assault,

Held, that the evidence was admissible as tending to shew the indecent quality of the assault, and as being in effect a part or continuation of the same transaction as that with which the prisoner was charged.

Per HAGARTY, C.J., and ARMOUR, J., the evidence was properly admissible as evidence in chief. *Regina* v. *Chute*, 46 Q. B. 555: R. S. c. 162, s. 41.

6. Attempt—

60.—The prisoner on a trial for rape was found guilty of an attempt to commit, and motion was made to have the verdict set aside and a new trial granted, on the ground that the evidence, if proof sufficient of any crime, was proof of a different crime from that with which defendant was charged and found guilty, and that he would therefore be still liable to be tried for the crime of which evidence was adduced,

Held, on a reserved case, that the prisoner having been found guilty of an attempt to commit the felony could not be tried for any other offence upon the facts upon which verdict was given, and the motion was therefore dismissed. *Regina* v. *Webster*, 9 L. C. R. 196, Q. B. 1858; R. S. c. 174, s. 183.

61.—A prisoner indicted for a misdemeanour (in this case it was for false pretences) may on such indictment be

convicted of an attempt to commit the offence which is a misdemeanour. *Regina* v. *Goff*, 9 C. P. 438; R. S. c. 174, s. 183.

62.—The prisoner was convicted of unlawfully attempting to steal the goods of one J. G. It appeared that he had gone out with one A. to Cooksville, and examined J. G.'s store with a view of robbing it, and that afterwards A. and three others, having arranged the scheme with the prisoner, started from Toronto, and made the attempt, but were disturbed after one had got into the store through a panel taken out by them. Prisoner saw them off from Toronto, but did not go himself.

Held, that as those actually engaged were guilty of the attempt to steal, the prisoner, under 27-28 Vict. c. 19, s. 9, was properly convicted. *Regina* v. *Esmonde*, 26 Q. B. 152; R. S. c. 174, s. 183.

63.—Attempting to bargain with or procure a woman falsely to make the affidavit provided for by C. S. U. C. c. 77, s. 6, that A. is the father of her illegitimate child, is an indictable offence. *Regina* v. *Clement*, 26 Q. B. 297; R. S. c. 145, s. 8.

64.—On an indictment for attempting to have connection with a girl under ten, consent is immaterial; but in such a case there can be no conviction for assault if there was consent. *Regina* v. *Connolly*, 26 Q. B. 317; R. S. c. 162, s. 39; c. 174, s. 191.

65.—The prisoners being indicted for an attempt to commit burglary, it appeared that they had agreed to commit the offence on a certain night, together with one C., but C. was kept away by his father, who had discovered their design. The two were seen about

twelve that night to come within about thirteen feet of the house, towards a picket fence in front, in which there was a gate; but without entering this gate they went, as was supposed, to the rear of the house, and were not seen afterwards. Afterwards, about two o'clock, some persons came to the front door and turned the knob, but went off on being alarmed, and were not identified,

Held, that there was no evidence of an attempt to commit the offence, no overt act directly approximating to its execution; and that a conviction, therefore, could not be sustained. *Regina* v. *McCann, et al.*, 28 Q. B. 514; R. S. c. 164, s. 35.

7. Banking Act—

66.—An indictment under the Banking Act, 1871, s. 62, need not allege that the return referred to was one required by law, nor that defendant made any use of the return, nor specify in what particulars the return is false. *Regina* v. *Côté*, 22 L. C. J. 141, 1877; R. S. c. 120, s. 81.

Neither is it necessary to allege that the false return was made with intent to mislead or to deceive. *Ibid.*

Nor that the Banking Act applies to the particular bank in question. *Regina* v. *Hincks*, 2 L. N. 358, 1878.

Nor that the accused was a director of a bank to which the Banking Act applied. *Ibid.*

Nor that the false return was ever made public; nor that the offence was committed in this district; nor that the statements or returns were made to the Dominion Government. *Ibid.*

67.—The enumeration in the indictment of several false statements in the returns constitutes but one count,

and a general verdict of guilty suffices if any one of the statements be proved to be false. *Regina* v. *Côté*, 22 L. C. J. 141, 1877; see also *Regina* v. *Hincks*, 2 L. N. 358, 1878.

8. Betting—

68.—The Act 40 Vict. (C) c. 31, intituled an Act for the repression of betting and pool selling, does not forbid betting, and does not apply to stakeholders in any of the three cases mentioned in section 2. *Regina* v. *Dillon*, 10 P. R. 352; R. S. c. 159, s. 9.

9. Bigamy—

69.—On a trial for bigamy, in proof of an alleged prior marriage, a deed was produced executed by the prisoner, containing a recital of the prisoner having a wife and child in England, and conveying certain lands and premises to two trustees, in trust, to receive and pay over the rents and profits to such wife and child; but with a power of revocation to the prisoner. B., one of the trustees, proved that at the time of the execution of the deed the prisoner informed him that he had quarrelled with his present wife, and had a law suit with her—that the place had been bought with the first wife's money, and he wished it to go to her; and that he requested B. to act as a trustee and to receive and to pay over to them the rents and profits; but B. never paid anything over, nor had he ever written to or heard from such alleged wife,

Held, not sufficient evidence to prove the alleged prior marriage. *Regina* v. *Duff*, 29 C. P. 255; R. S. c. 161, s. 4.

70.—The prisoner was convicted of bigamy under 32-33 Vict. c. 20, s. 58. The first marriage took place in Toronto, the second in the United States,

Held, that it was incumbent on the crown to charge and prove that at the time of the commission of the offence, the prisoner was a British subject, resident in Canada, that he had left Canada with intent to commit the offence. It was a misdirection to withdraw from the jury the question of his having left with intent.

Per WILSON, C.J., the indictment did not sufficiently charge the offence. It is a question whether the trial should not be declared a nullity. *Regina* v. *Pierce*, 7 Can. Law Times 191; 13 O. R. 226; Ont. R. S. c. 161, s. 4.

71.—And *held*, on motion for arrest of judgment, that the word "elsewhere" in the statute, gives to the court its jurisdiction regarding offences committed in the United States by British subjects, but that the allegation that the accused was a British subject was necessary to support the indictment. *Regina* v. *McQuiggan*, 2 L. C. R. 340; R. S. c. 161, s. 4.

72.—In an indictment for bigamy, it is incumbent upon the Crown to prove that a person marrying a second time, whose husband or wife has been continually absent from such person for seven years then previous, knew that the other consort was living within that time. *Regina* v. *Fontaine*, 15 L. C. J. 141; R. S. c. 161, s. 4

73.—On a motion in arrest of judgment, on a trial for bigamy,

Held, that in an indictment for bigamy committed in a foreign country it is necessary to aver that the accused was a British subject; that he was or is a resident in the province, and that he had left the

same with intent to commit the offence. *Regina* v. *McQuiggan*, 2 L. C. R. 340; R. S. c. 161, s. 4.

74.—On a trial for bigamy, the Crown established the fact of the two marriages, which were over seven years apart.

It was *held*, that the onus of proving that the prisoner did not know of the existence of the first wife at the time of the second marriage, rested upon the defence, and that it was not incumbent upon the Crown to establish the prisoner's knowledge of the first wife's existence at the time of the second marriage. *Regina* v. *Dwyer*, 27 L. C. J. 201; 6 L. N. 66; R. S. c. 161, s. 4.

75.—The witness called to prove the first marriage swore that it was solemnized by a J. P. in the state of New York, who had power to marry, but this witness was not a lawyer nor inhabitant of the United States, and did not state whence the authority of the justice was derived,

Held, insufficient. *Regina* v. *Smith*, 14 Q. B. 565.

76.—Where the prisoner relies upon the first wife's lengthened absence, and his ignorance of her being alive, he must shew enquiries made and that he had reason to believe her dead, more especially when he has deserted her; and this, notwithstanding that the first wife may have married again. *Ibid.* R. S. c. 161, s. 4.

77.—The first wife is not admissible as a witness to prove that her marriage with the prisoner was invalid. *Regina* v. *Madden*, 14 Q. B. 588; R. S. c. 174, s. 217; *Regina* v. *Fontaine*, 15 L. C. J. 141. The evidence of

the first wife is not admissible, nor is that of the second until the first marriage is proved. *Regina* v. *Tubbee*, 1 P. R. 98; R. S. c. 174, s. 217.

78.—It is not necessary that marriages be solemnized in a church. Where banns have been published, and no dissent then expressed by parents or guardians, the husband being under age is no objection even by the English Marriage Act; but, *quære*, whether that Act is in force here. *Regina* v. *Seeker*, 14 Q. B. 604.

79.—In order to prove the second marriage, which took place in Michigan, the testimony of the officiating minister was tendered, who testified that he was a minister of the Methodist church, that he had solemnized hundreds of marriages during the last twenty-five years, that he understood the marriage law of Michigan, that he had resided all the time there, had had communications with the Secretary of State regarding these laws, and that he had solemnized this marriage according to the laws of that state,

Held, that this was admissible evidence to prove the validity of the marriage, even assuming that such ought not to be presumed. The Act, R. S. C. c. 161, s. 4, is *intra vires*. *Regina* v. *Brierly*, 7 Can. Law Times 333; 14 O. R. 535; R. S. c. 161, s. 4.

10. Bribery—

80.—On demurrer to an indictment set out below for conspiracy to bring about a change in the Government of the Province of Ontario, by bribing members of the legislature to vote against the Government,

Held, (O'Connor, J., dissenting), 1. That an indictable offence was disclosed; that a conspiracy to bribe members of parliament is a misdemeanour at common law, and as such indictable.

2. That the jurisdiction given to the legislature by R. S. O. c. 12, ss. 45, 46, 47, 48, to punish as for a contempt, does not oust the jurisdiction of the courts where the offence is of a criminal character, but that the same act may be in one aspect a contempt of the legislature, and in another aspect a misdemeanour.

3. That the Legislative Assembly has no criminal jurisdiction, and hence no jurisdiction over the matter considered as a criminal offence.

4. That the indictment, considered as a pleading, sufficiently stated the offence intended to be charged.

Per O'Connor, J. 1. That the bribery of a member of parliament in a matter concerning parliament or parliamentary business is not an indictable offence at common law, and has not been made so by any statute.

2. That in all matters and offences done in contravention of the law and constitution of parliament, with the exception of treason, felony and breaches of the peace, parliament alone has jurisdiction, and the ordinary courts, civil and criminal, have no jurisdiction.

3. That the *lex et consuetudo parliamenti* reserves to the High Court of Parliament exclusive jurisdiction to deal with all matters relating to its own dignity, or concerning its powers, its members, and its business, with the above three exceptions. *Regina* v. *Bunting, et al.*, 21 L. J. N. S. 132; 7 O. R. 524 Q. B.

81.—*Semble*, that the treasurer of a municipality might be indicted for paying a member of the council for his attendance. *East Nissouri* v. *Horseman*, 16 Q. B. 576.

82.—The statute 5-6 Edw. VI. c. 16, against buying and selling of offices, is in force in this country under the 40 Geo. III. c. 1, as part of the criminal law of England. Any act done in contravention of that statute is indictable, though not specially made so.

Quere, per ROBINSON, C.J., whether it is also introduced by the 32 Geo. III. c. 1, which adopts the law of England, "in all matters of controversy relative to property and civil rights." The 49 Geo. III. c. 126, clearly extends the 5-6 Edw. VI. to Upper Canada, and to the office of sheriff. *Foott* v. *Bullock*, 4 Q. B. 480, confirmed; *Regina* v. *Mercer*, 17 Q. B. 602; *Regina* v. *Moodie*, 20 Q. B. 389.

83.—Where a statute relating to municipal elections made no provisions to repress bribery,

Per ROBINSON, C.J., it would no doubt be an indictable offence. *Regina ex rel. McKeon* v. *Hogg*, 15 Q. B. 140.

84.—The defendant agreed with R., then sheriff of the county of Norfolk, to give him £500 and an annuity of £300 a year if he would resign. R. accordingly placed his resignation in defendant's hands. The £500 were paid and certain lands conveyed to secure the annuity; and it was further agreed that in the event of the resignation being returned, and R. continuing to hold the office, the money should be repaid and the land reconveyed; but R. did not undertake in any way to assist in procuring the appointment for defendant. The defendant having been appointed by the government in ignorance of this agreement, an information was filed against him and *sci. fa.* brought to cancel his patent,

Held, an illegal transaction within 5-6 Edw. VI., and that an information might be sustained under that Act without reference to the 49 Geo. III., which clearly prohibited and made it a misdemeanour. *Regina* v. *Mercer*, 17 Q. B. 602.

Semble, that the agreement would also have been an offence at common law. The ignorance of the government, which was averred in the information, as to the illegal agreement, was immaterial. *Ibid.*

11. Burglary –

85.—Burglary is not an offence within the Ashburton treaty or the statutes of Canada passed to give effect to it. *In re Beebe*, 3 P. R. 273; R. S. c. 142.

12. Coining—

86.—Section 18 of C. S. C. c. 90, makes it an offence to have possession of any coin counterfeited to resemble, or any dies for the purpose of imitating, any foreign gold or silver coin described in the 16th section of the Act. The gold or silver coin there described are any coin of coarse gold or silver resembling any coin made by the authority of any foreign state, and then actually current there, though not current by law in this province. An indictment under this section alleged, that there was a certain silver coin known as half-a-dollar struck by and current in the United States, though not current by law in this province, and that the defendants had in their possession counterfeited coin, each piece resembling a piece of the current coin of the United States of the value of fifty cents, and called therein half-a-dollar, and also dies used to counterfeit the current silver coin of the United States called half-a-dollar, etc.,

Held, on demurrer, that the indictment was bad, for not alleging that the counterfeit coin which the defendants had, resembled some gold or silver coin of the United States, but that the allegation as to the dies was sufficient without alleging that the silver coin was not current in this province. *Regina* v. *Tierney*, 29 Q. B. 181; R. S. c. 167, s. 12.

13. Concealing Birth—

87.—On an indictment for concealing the birth of a child, it appeared that the prisoner, who lived alone, had placed the dead body of the child behind a trunk in the room she occupied, between the trunk and the wall. On being charged with having had a child she denied it, saying she was suffering from cramps, and it was only after the doctor, who was called in, had informed her that he knew that she had been delivered of a child, and on being pressed by one of the women present, that she pointed out where the body was, and the woman went and got it. Until so pointed out the body could not be seen by any one in the room,

Held, that the evidence, more fully set out in the report, was sufficient to go to a jury; and the County Court judge, before whom the prisoner was tried by her consent without a jury, having found her guilty, the court refused to interfere. *Regina* v. *Piché*, 30 C. P. 409; R. S. c. 162, s. 149; c. 175, ss. 5, 13.

14. Conspiracy—

88.—The plaintiff in error had been convicted on an indictment for conspiracy to defraud by obtaining goods on false pretences. On a writ of error it was urged:—1st, that the false pretences were not set up, and 2nd, that the overt act disclosed a civil trespass

only, and consequently that they could not support an indictment for conspiracy,

Held, that the indictment for conspiracy differs from an indictment for false pretences, the offence in the former case being complete by the combination and agreement, although nothing be done in execution of the conspiracy. Writ quashed. *Thayer* v. *Regina*, 5 L. N. 162; R. S. c. 173, s. 26.

89.—Upon an indictment for conspiracy to procure by fraud the return of one F. as a member of the legislative assembly,

Held, that it was clearly unnecessary to prove that all the defendants, or any two of them, actually met together and concerted the proceeding carried out; it was sufficient if the jury was satisfied from their conduct and from all the circumstances, that they were acting in concert. *Regina* v. *Fellowes*, 19 Q. B. 48; R. S. c. 173, s. 26.

90.—An indictment for conspiracy with intent to defraud which alleges merely that the defendants did combine to secrete and make away with the property of one of them, A. with intent to defraud a creditor of a sum due to without alleging that A. was insolvent, and was in contemplation of insolvency the se g was carried out, is insufficient. *Regina* v. *Sternberg*, 8 L. N. 122 Que.; R. S. c. 173, s. 26.

91.—Where the defendants were charged with conspiring to cheat and defraud their creditors, and pleaded not guilty,

Held, that, in an indictment for conspiracy, an offence prohibited by penal statute must be set forth. *Regina* v. *Roy, et al*, 11 L. C. J. 89; R. S. c. 173, s. 26.

92.—And *held*, also, that the count in which the conspiracy is alleged must state of what thing or things defendants intended to defraud their creditors. *Ibid.*

93.—Indictment charging that defendants, H. C. and D., were township councillors of East Nissouri, and F. treasurer; and that defendants intending to defraud the council of £300 of the money of said council, falsely, fraudulently, and unlawfully did combine and conspire, unlawfully and fraudulently to obtain and get into their hands, and did then, in pursuance of such conspiracy, and for the unlawful purpose aforesaid, unlawfully meet together, and fraudulently and unlawfully get into their hands £300 of the money of said council, then being in the hands of said F. as such treasurer as aforesaid,

Held, bad, on writ of error. *Horseman* v. *Regina*, 16 Q. B. 543; R. S. c. 173, s. 26. See Bribery *ante*, Nos. 80 *et seq.*

15. Embezzlement: Frauds by Agents, etc.—

94.—The French Government cannot obtain the extradition of a prisoner charged with embezzlement. *Taschemacher, ex parte*, 6 R. L. 328, S. C. 1874.

95.—Where the registrar and treasurer of the late Trinity House was charged with embezzling a portion of the fund known as "The Decayed Pilots' Fund," which, by the Trinity House Act, was declared to be vested in the master, deputy-master, and wardens of the Trinity House of Montreal, and to be under their management,

Held, that that was an embezzlement of moneys, the property of "Our Lady the Queen." *Regina* v. *David*, 17 L. C. J. 310; R. S. c. 164, s. 54; c. 174, s. 126.

96.—A clerk in a bank may be convicted of embezzlement on proof of a general deficiency supported by evidence of unlawful appropriation, though no precise sum paid by any particular person is proved to have been taken. *Regina* v. *Glass*, 1 L. N. 41, 1877; Ramsay, A. C., 186; R. S. c. 164 s. 59.

97.—The power of attorney must be written, and oral testimony of a verbal power of attorney will not bring the case within the scope of the statute. *Regina* v. *Chouinard*, 4 Q. L. R. 220; R. S. c. 164, s. 62.

98.—The prisoner was convicted upon an indictment under 4 and 5 Vict. c. 25, s. 41, charging that one W. entrusted to him for a special purpose, viz., for the purpose of exhibiting to B. and obtaining another note made by prisoner to and endorsed by B.,—the said prisoner then being the agent of W.,—a promissory note made by prisoner payable to and endorsed by B., being a valuable security, without any authority to sell, transfer, etc., or convert the same to his own use, and that he unlawfully kept and converted it to his own use. It appeared that the prisoner gave an endorsed note, payable at Kingston, in payment of goods purchased, with an agreement that in case the payee should be unable to get it discounted at Kingston he would procure for him a new note, with the same endorsers, payable at Belleville. The payee being unable to get it discounted at Kingston, sent the note to W. at Belleville, with instructions to get a new note from the prisoner as agreed on; W. entrusted the prisoner with the note on his promise that he would take it to the endorsers, and either return it or bring back a new note at once. The prisoner, however, kept the note, and neither returned it nor procured another,

though often requested to do so both by the payee and W.

Held, that the prisoner was not an agent within the meaning of the statute, and that the conviction must be quashed. *Regina* v. *Hynes*, 13 Q. B. 194; R. S. c. 164, ss. 61, 4.

Semble, also, that it could not be said that the prisoner was entrusted with the note without any authority to transfer or pledge the same; or that his retaining it was proof of converting it to his own use. *Ibid.*

99.—A school trustee having money in his hands not as secretary and treasurer of a board, or in any official capacity, cannot embezzle such money, his duty as trustee not requiring or authorizing him to receive it. *Ferris* v. *Irwin*, 10 C. P. 116; R. S. c. 164, s. 4.

100.—*Semble*, that the treasurer of a municipality may be indicted for an appropriation of the funds clearly contrary to law, even though sanctioned by a resolution of the council. *Municipality of East Nissouri* v. *Horseman*, 16 Q. B. 576; R. S. c. 164, ss. 65-66, 4.

101.—The indictment charged that one M. entrusted to defendant, then being an agent, a promissory note of one R., for $200, for the special purpose of receiving £6 thereon from A., and that defendant, contrary to the purpose for which said note was entrusted to him, did unlawfully negotiate and convert the same to his own use. It appeared that R. had made the note for A.'s accommodation, and A. being indebted to one C. in £6, it was agreed that he should deposit this note with M. to secure the payment. Defendant, by C.'s order, got the note from M. on condition that he should give

it up to A. on the £6 being paid. A. afterwards paid this sum to defendant, but defendant kept the note and sued R. upon it, alleging that he was entitled to do so by some arrangement with R., which the jury found was not the case, and they convicted defendant,

Held, that the conviction could not be sustained, for defendant was not an agent within the meaning of the Act, which refers only to general agents of the descriptions specified; and

Semble, that upon the evidence he was not M.'s agent, or guilty of any breach of trust towards him. *Regina* v. *Armstrong*, 20 Q. B. 245; R. S. c. 164, ss. 59, 4.

102.—The prisoner, being a clerk in the bank of Upper Canada, was placed in an office apart from the bank, and entrusted with funds for the purpose of paying persons having claims upon the government, which payments were made upon the cheques of the receiver-general, whose office was in the same building. While so employed, a deficiency was discovered in his accounts, which he at first ascribed to a robbery, but he afterwards confessed that he had lent the moneys entrusted to him to various friends. It also appeared that on a certain day he had received a cheque from the receiver-general for £1,439, 15s. for coupons on government debentures held by the bank, and had credited himself in account with that sum as if paid out by him on the cheque, making no entry of the coupons, thus covering his deficiencies by so much, and making it appear that he had paid out the amount of the cheque in cash, when in fact he had paid nothing. The indictment contained two counts: the first charging that on, etc., the prisoner being a clerk, then employed in that capacity by the bank, did then and

there in virtue thereof receive a certain sum, to wit, £1,439, 15s., for and on account of the said bank, and the said money feloniously did embezzle. The second, that he as such clerk received a certain valuable security, to wit, an order for the payment of money, to wit, £1,439, 15s. for and on account of the said bank, and the said valuable security feloniously did embezzle. On this indictment he was convicted of embezzlement,

Held, that the prisoner had been guilty of embezzlement within 19 Vict. c. 121, s. 40; and the conviction was affirmed. *Regina* v. *Cummings*, 16 Q. B. 15; R. S. c. 164, s. 59.

103.—On an indictment against a treasurer of a county for embezzling £9, 14s. 10d., received for taxes, it appeared that defendant received the money in October, 1858, and resigned in February, 1859, when his books were taken from him by the warden, although the usual time for making up his account with the county, 31st of March, had not arrived. This sum was not entered in his books as received, nor was there any entry of other moneys received for taxes at a later date; but after his books had been taken, he sent in a list of moneys received, including this, although before he did so, it had been stated in a newspaper that this and other payments were not accounted for. There was no proof that he was indebted to the county on the whole of his accounts, and it was shewn that he claimed that it was in his debt; and that the question was pending before arbitrators, to whom several civil suits between himself and the council had been referred. The jury found defendant guilty.

Held, that the evidence did not warrant the conviction, and a new trial was granted.

Held, also, that the money was not improperly charged to be the money of the county, though it was received for the township of Maidstone, and was to be accounted for to it by the county. *Regina* v. *Bullock*, 19 Q. B. 513; R. S. c. 66, s. 164; c. 174, s. 121.

104.—Upon an indictment for stealing money, the property of certain persons (composing the firm of the American Express Co.), it appeared that the agent of the company in St. Mary's delivered to the prisoner for delivery two parcels containing $888.00, which had been sent by one K., addressed to E. & S. at St. Mary's, and that he appropriated them to his own use. On the trial in the quarter sessions the counsel for the crown asked the agent of the company when their (the company's) liability ceased, which was objected to by the prisoner's counsel,

Held, 1st. That the enquiry aimed at was material to shew how far the company had undertaken to deliver, and therefore when their duty as carriers ceased, but that the question as put was objectionable.

2nd. That it was a question for the jury to say whether the contract of the company was to deliver to E. & S., and the property in the money therefore was properly laid in the indictment.

3rd. That if the undertaking was to deliver the money to E. & S., the prisoner was the agent of the company for that purpose.

4th. That money is property, of which a person can be a bailee so as to make him guilty of felony, if he appropriates it to his own use. The case not having been properly submitted to the jury on these points, a new trial was ordered in the court below. *Regina* v. *Massey*, 13 C. P. 484; R. S. c. 164, s. 59, s. 2, § *e*.

105. Defendant hired a pair of horses from a livery stable to go to a particular place, and afterwards absconded with them. The jury found that at first he did not intend to steal, but having accomplished the object of hiring, he then made up his mind to convert them to his own use.

Held, that he was a bailee, within C. S. C. c. 92, s. 55, and properly convicted on an indictment for larceny in the ordinary form. *Regina* v. *Tweedy*, 22 Q. B. 120; R. S. c. 164, s. 65.

106.—In an indictment of a trustee for fraudulently converting property, it is sufficient to set out that A. "being a trustee," did, etc., instead of that A. "was a trustee, and being such trustee, did," etc. The trust need not be set out in the indictment. *Regina* v. *Stansfield*, 8 L. N. 123, Que.; R. S. c. 164, s. 65.

107.—Prisoner was indicted for larceny, as a bailee, of a sum of money. The complainant produced a receipt taken at the time of the deposit in the hands of the prisoner, by which it appeared that the deposit was made "awaiting the payment he might make of a like sum to R. A. Benoit,"

Held, that this receipt implied that the prisoner was to pay a similar sum and not actually the same pieces of money, and that there was no larceny. That parol testimony could not be admitted to vary the nature of the transaction as expressed by the receipt. *Regina* v. *Berthiaume*, 10 L. N. 365, Que.; M. L. R. 3 Q. B.; R. S. c. 164, ss. 60, 4.

16. Embracery—

108.—It is essential to constitute the offence of embracery that there should be a judicial proceeding pending at

the time the offence is alleged to have been committed, and the existence of such proceeding must be alleged in the indictment.

A recognizance, which on its face does not set out the particular offence charged against the person bailed, and which therefore on its face cannot be identified with any particular case, is insufficient to establish that a case was pending. *Regina* v. *Leblanc*, 8 L. N. 114, Que.; R. S. c. 173, s. 30. See *Regina* v. *Comellier*, 29 L. C. J. 69.

17. Enlistments, Foreign—

109.—The Imperial Statute, 59 Geo. III. c. 69, against procuring and endeavoring to procure enlistments in this country for the army of the United States,

Held, to be in force in this province, and a conviction under it sustained. *Regina* v. *Schram*, *Regina* v. *Anderson*, 14 C. P. 318.

110.—A warrant of commitment under the Foreign Enlistment Act, 59 Geo. III. c. 69, s. 4, reciting that T. K. C. "was this day charged (not saying upon oath) before us," and without shewing any examination by the magistrates, upon oath or otherwise, into the nature of the offence, and commanding the constables or peace officers of the county of Welland to take the said T. K. C. into custody,

Held, sufficient. *In re Clarke*, 10 L. J. 331.

111.—A warrant of commitment under the statute, committing the prisoner until "discharged by due course of law," sufficiently complies with the statute, which provides for a committal until delivered by due course of law. *Ibid.*

112.—A commitment under 28 Vict. c. 2, s. 1, stating the offence "for that he on, etc., at, etc., did attempt to procure A. B. to serve in a warlike or military operation in the service of the government of the United States of America," omitting the words, "as an officer, soldier, or sailor," etc.,

Held, bad. *In re Bright*, 1 L. J. N. S. 240, C. L. Chambers; 28 Vict. c. 2, s. 1, *Rep'd.*

113.—A warrant of commitment on a conviction had before a police magistrate for the town of Chatham, in Upper Canada, under 28 Vict. c. 2, averring that on a day named "at the town of Chatham, in said county, he the said A. S. did attempt to procure A. B. to enlist to serve as a soldier in the army of the United States of America, contrary to the statute of Canada in such case made and provided;" and then proceeding, "and whereas the said A. S. was duly convicted of the said offence before me the said police magistrate and condemned," sufficiently shewed jurisdiction. *In re Smith*, 1 L. J. N. S. 241, C. L. Chambers.

2nd. That the direction to take the prisoner "to the common jail at Chatham," the warrant being addressed "to the constables, etc., in the county of Kent, and to the keeper of the common jail at Chatham, in the said county," was sufficient. *Ibid.*

3rd. That the warrant as above set out sufficiently contained an adjudication as to the offence, though by way of recital. *Ibid.*

4th. That the words "to enlist to serve" do not shew a double offence, so as to make a warrant of commitment bad on that ground. *Ibid.*

5th. That the offence created by the statute was sufficiently described in the warrant as above set out. *Ibid.*

6th. That the warrant was not bad as to duration or nature of imprisonment. *Ibid.*

7th. That the amount of costs was sufficiently fixed in the warrant of commitment. *Ibid.*

8th. That there is power to commit for non-payment of costs. *Ibid.*

9th. That the statute does not require both imprisonment and money penalty to be awarded, but that there may be both or either. *Ibid.*

114.—A warrant of commitment reciting that F. M. was charged on the oath of J. W., "for that he F. M. was this day charged with enlisting men for the United States army, offering them $350 each as bounty," without charging any offence with certainty, and without stating that the men enlisted were subjects of Her Majesty, and without shewing that J. W. was unauthorized by license of Her Majesty to enlist,

Held, bad. *In re Martin*, 3 P. R. 298.

18. Exposure, Indecent

115.—The indecent exposure must be in an open and public place, but by the circumstances a place ordinarily private might become public within the meaning of the law. Where a person exposed his person in a grossly indecent manner in a private yard so that he might be seen from a public road, where there were persons passing, the indictment would be maintained,

Quære, whether exposure to one person was sufficient to support the charge. *Regina* v. *Levasseur*, 9 L. N. 386, Que.; R. S. c. 157, s. 8.

116.—The charge was that petitioner being "a loose, idle and disorderly person," for that the said R. W., on the 6th day of June, instant, at the said city of Montreal, did indecently expose his person, to wit, his private parts, in a vacant lot of ground adjoining St. Denis street in the said city, so as to be seen from the said street.

It was contended that the exposure must be in a street, road, public place or highway. The French version is very clear; the words are *y expose*. The English version is not clear. The court adopted the version most favorable to the prisoner. The conviction was quashed. *Ex parte Walter, Ramsay, A. C.* 183; R. S. c. 157, s. 8. See Vagrancy.

19. Extortion—

117.—Where two defendants sat together as magistrates, and one exacted a sum of money from a person charged before them with a felony, the other not dissenting,

Held, that they might be jointly convicted.

Held, also, not indispensable that the indictment should charge them with having acted corruptly. *Regina* v. *Tisdale, et al.*, 20 Q. B. 272.

20. False Pretences—

118.—The prisoner, who had been discharged from the service of A., went to the store of D. & S. and represented herself as still in the employ of A., who was in the habit of dealing there, and asked for goods in A.'s name, which were put up accordingly, but, instead of being delivered to the prisoner, were sent to A.'s house. The prisoner, however, went directly from the store to A.'s house, and, remaining in the kitchen with the

servant until the clerk delivered the parcel, snatched it from the servant, saying, "that is for me, I am going in to see A.," but, instead of going in to see A., went out of the house with the parcel,

Held, on a reserved case before the judges in appeal, that the prisoner was rightly convicted as laid in the indictment under 4 and 5 Vict. c. 25, s. 45, of having obtained goods from D. & S. by false pretences. *Regina* v. *Robinson*, 9 L. C. R. 278; R. S. c. 164, s. 77.

119.—The prisoner, at Seaforth, in the county of Huron, falsely represented to the agent of a sewing machine company that he owned a lot of land, and thus induced the agent to sell machines to him, which were sent to Toronto, in the county of York, and delivered to him at Seaforth,

Held, that the offence was complete in Huron, and could not be tried in York. *Regina* v. *Feithenheimer*, 26 C. P. 139; R. S. c. 164, s. 77; c. 174, s. 10.

120.—Defendant was indicted for obtaining by false pretences from M. an order for the payment of $806.69, the property of P., with intent to defraud. It appeared that a suit was pending in chancery, in which the defendant, who was a solicitor, but had been struck off the rolls, was acting for P. Defendant procured V., his clerk, to write a præcipe in the name of McG., who had acted as counsel on defendant's instructions, for $806.69 of the moneys standing to the credit of the cause, and to sign McG.'s name to it. V. left it with M., the accountant in chancery, who prepared a check payable to P. or order. Defendant then got one H., a solicitor, to get the check from the accountant and sign McG.'s name to the receipt, on which H. handed

the cheque to defendant, who got P. to endorse it, and paid P. $400, keeping the rest for costs,

Held, that the defendant was rightly convicted, for he obtained the check from the accountant by fraud and forgery, and with intent to defraud him, and he was not the less guilty because P. was entitled to the money, and there was no sufficient proof of intent to defraud P. *Regina* v. *Parkinson*, 41 Q. B. 545; R. S. c. 174, s. 77; c. 174, s. 112.

121.—Procuring registration as a physician under 37 Vict. c. 30, O., by false or fraudulent representation. See *Regina* v. *College of Physicians*, 44 Q. B. 146.

122.—In an indictment for obtaining goods by false pretences, it is not necessary to mention the false pretences. *Regina* v. *Lavigne*, 4 R. L. 411, Q. B. 1872; R. S. c. 174, schedule No. 2.

123.—A shareholder in an incorporated company, acting as its agent, gave a promissory note to B., another shareholder in the company, for $250, to meet a protested draft on the company for $200, due for insurance, and A. afterwards stated at a meeting of the committee of management of the company that he gave the note for $250 because B. told him that a certain broker had discounted the note for $50, and he could not get it discounted for less, and B. himself stated at the meeting that he had been obliged to pay the broker the $50 for discounting the note, and that the broker had entrusted him with the collection of it, upon which representation a cheque was given to A., by which he obtained from the treasurer of the company the money to pay the note, and it was afterwards discovered that the broker had never discounted the note, but that B.

himself had discounted it and had charged $50 for doing so. Both A. and B., on this, were indicted for obtaining $50 on false pretences, the money of D., and others, with intent to defraud,

Held, on motion to set aside the conviction, that a shareholder in such a company could not commit larceny from the company, or be guilty of obtaining its money by false pretences, inasmuch as, being a shareholder, he was joint owner of the funds and property of the company, and the conviction was, therefore, bad. *Regina* v. *St. Louis, et al.*, 10 L. C. R. 34, Q. B.; R. S. c. 164, s. 78.

124.—On an indictment for false pretences the prosecutor is not bound to deliver to the defendant the particulars of the crime charged against him, on which the indictment is founded. *Regina* v. *Seneeal*, 8 L. C. J. 246, Q. B. 1862; R. S. c. 174, Schedule No. 2.

125.—Proof that the defendant had obtained from the prosecutor a promissory note, on a promise to pay the plaintiff what he owed him out of the proceeds of the note when discounted, is not sufficient to sustain a conviction on an indictment charging the defendant with obtaining a signature with intent to defraud. *Regina* v. *Pickup*, 10 L. C. J. 310 & 2 L. C. L. J. 35; R. S. c. 164, s. 78.

126.—The defendant was indicted for obtaining goods with intent to defraud, and convicted on evidence which showed that he had obtained from T. W. R. an order for the delivery of the goods, promising to pay cash but failing to do so, and becoming insolvent a few days after. He had had other transactions with T. W. R., and met his engagements in connection with them,

Held, on a reserved case, that the conviction was sustained by the evidence, and would not be disturbed. *Regina* v. *McDonald*, 2 L. C. L. J. 34.

127.—A defendant indicted for misdemeanor in obtaining money under false pretences cannot, under C. S. C. c. 99, s. 62, be found guilty of larceny. That clause only authorizes a conviction for the misdemeanour, though the facts proved amount to larceny. Where a defendant on such an indictment has been found guilty of larceny,

Held, that the court had no power, under C. S. C. c. 112, s. 3, to direct the verdict to be entered as one of "guilty," without the additional words. *Regina* v. *Ewing*, 21 Q. B. 523; R. S. c. 174, s. 196.

128.—An indictment that defendant by false pretences did obtain board of the goods and chattels of the prosecutor,

Held, bad, the term "board" being too general. *Regina* v. *McQuarrie*, 22 Q. B. 600.

129.—One D., being postmaster at Berlin, transmitted to defendant at Toronto several post-office orders payable there, which defendant presented and got cashed, but it appeared afterwards that the moneys thus obtained had never been received by D. for defendant, and that frauds to a large extent had been thus committed.

Defendant having been convicted upon an indictment which charged him with unlawfully, fraudulently, and knowingly obtaining from our Lady the Queen these sums, of the moneys and property of our said Lady the Queen, with intent to defraud,

Held, that the indictment was good: that the 56th section of the Post-Office Act, C. S. C. c. 31, was not

applicable to the case; that the money was properly charged to be the money of the Queen, not of the post-master; and that it was unnecessary to allege an intent to defraud any particular person. Remarks as to the extensive nature of the provision on which the indictment was framed, C. S. C., c. 92, s. 73,

Semble, that defendant might also have been properly convicted under another count of the indictment, charging him with having obtained the money by false pretences. *Regina* v. *Dessaner*, 21 Q. B. 231: R. S. c. 174, s. 112.

130.—Where a person tenders to another a promissory note of a third party in exchange for goods, though he says nothing, yet he should be taken to affirm that the note has not to his knowledge been paid, either wholly or to such an extent as almost to destroy its value,

Held, that on the evidence in this case it was properly left to the jury to say whether the note for $100, which defendant gave to the prosecutor for the full amount, had or had not been paid except the value of half a barrel of flour; and that the conviction was warranted. *Regina* v. *Davis*, 18 Q. B. 180; R. S. c. 164, s. 78.

131.—The prisoner represented to the prosecutor that a lot of land, on which he wished to borrow money, had a brick house upon it, and thus procured a loan, when in fact the land was vacant,

Held, that he was properly convicted. *Regina* v. *Huppel*, 21 Q. B. 281; R. S. c. 164, s. 78.

132.—The prisoner, with one D., whose note he held, came to the store of H. & F., where an agreement was

entered into between the parties, that D. would pay for all the goods furnished by H. & F. to the prisoner, on the amount being endorsed on his (D.'s) note, held by the prisoner. The prisoner several times called at H. & F.'s with the note mentioned, obtained goods, and had the amount endorsed on the note. Afterwards he called without the note and got goods, on his promising to bring the note within a day or two to have the amount endorsed thereon. Prisoner saw D. the day after, and directed him not to pay anything more than the amounts endorsed on the note, and he never after presented the note to have the amount endorsed thereon,

Held, that there was no false representation or pretence of an existing fact, but a mere promise of defendant, which he failed to perform. *Regina* v. *Bertles*, 13 C. P. 607; R. S. c. 164, s. 78.

133.—*Held*, that defendant (who was indicted for false pretences) could not on the indictment and evidence in this case be convicted of larceny under C. S. C. c. 99, s. 62.

Quere, as to the meaning of that clause. *Ibid.* R. S. c. 174, s. 196.

134.—The prisoner sold a mare to B., taking his notes for purchase money, one of which was for $25, and a chattel mortgage on a mare as collateral security. After this note had matured he threatened to sue, and B. got one R. to pay the money, the prisoner promising to get the notes from a lawyer's office, where he said they were, and give them up next morning. This note, however, had been sold by the prisoner some time before to another person, who afterward sued B. upon it, and obtained judgment,

Held, that the prisoner was properly convicted of obtaining the $25 by false pretences. *Regina* v. *Lee*, 23 Q. B. 340; R. S. c. 164, s. 77.

135.—The indictment charged one B. with obtaining by false pretences, from one J. T., two horses, with intent to defraud, and that the defendant was present aiding and abetting the said B. the misdemeanour aforesaid to commit,

Held, good, defendant being charged as a principal in the second degree. *Regina* v. *Connor*, 14 C. P. 529; R. S. c. 145, s. 7.

136.—The term "valuable security" used in C. S. C. c. 92, s. 72, means a valuable security to the person who parts with it on the false pretence; and the inducing a person to execute a mortgage on his property is therefore not obtaining from him a valuable security within the Act. *Regina* v. *Brady*, 26 Q. B. 13; R. S. c. 164, s. 2.

137.—Evidence that the prisoner obtained by false pretences a cheque on a bank which he subsequently cashed, will not support an indictment for obtaining money under false pretences. *Regina* v. *Maynard*, 2 L. N. 357, 1879; R. S. c. 164, s. 2.

138.—An indictment for obtaining from A. $1,200 by false pretences, is not supported by proof of obtaining A.'s promissory note for that sum, which A. afterwards paid before maturity. *Regina* v. *Brady*, 26 Q. B. 13; R. S. c. 164, s. 2.

139.—G., the prisoner, and another were in a boat on the the bay, and they agreed to take M., the prosecutor, to meet the steamer, G. saying the charge would be 75

cents at the steamer. The prosecutor, according to his own account, took out a $2 bill at the steamer, saying he would get it changed. Prisoner said, "I'll change it," upon which the prosecutor handed it to him, and he shoved off with it. Other witnesses represented the prisoner's statement to be that he had change. The prosecutor did not say what induced him to part with the money,

Held, that a conviction could not be sustained. *Regina* v. *Gemmell*, 26 Q. B. 312; R. S. c. 164, s. 77.

140.—*Held*, that the indictment for false pretences in this case was clearly sufficient, as it followed exactly the form sanctioned by 18 Vict. c. 92. *Regina* v. *Davis*, 18 Q. B. 180; R. S. c. 174, schedule No. 2.

141.—A municipality having provided some wheat for the poor, the defendant obtained an order for fifteen bushels, described as "three of golden drop, three of fife, nine of milling wheat." Some days after he went back, and represented that this order had been accidentally destroyed, when another was given to him. He then struck out of the first order the words, "three of golden drop, three of fife," and presenting both orders, obtained in all twenty-four bushels. The indictment charged that defendant unlawfully, fraudulently and knowingly, by false pretences, did obtain an order from A., one of the municipality of B., requiring the delivery of certain wheat by and from one C., and by presenting the said order to C., did fraudulently, knowingly, and by false pretences, procure a certain quantity of wheat, to wit, nine bushels of wheat, from the said C., of the goods and chattels of the said municipality, with intent to defraud,

Held, sufficient in substance, not being uncertain or double, but in effect charging that defendant obtained the order and by presenting it obtained the wheat by false pretences,

Held, also, that the evidence, set out in the case, was sufficient to sustain the conviction. *Regina* v. *Campbell*, 18 Q. B. 413; R. S. c. 164, s. 78.

142.—In the spring of 1882, prisoner went to one McG., a large furniture dealer at Montreal, and represented to him that he was about to open a hotel which he had rented at Ste. Thérèse, that he had made considerable repairs to the hotel and was rather short of money. He declared that he wanted for his hotel about eight or nine hundred dollars worth of furniture, which he proposed to purchase on credit, offering as security a mortgage upon an immovable property of which he was proprietor at Longue Pointe, and which he represented to be worth from $3,000 to $4,000 over and above all charges and incumbrances.

As McG. appeared to have some hesitation about the sufficiency of the security offered, prisoner proposed to give his property in payment for the furniture he required, but on the two following conditions, 1st. That McG. would assume the payment of a certain annual rent of about $200 to one Mrs. H.; and 2nd. that he would transfer back the property in question at the expiration of a period of three months, on McG. being paid the full amount of his bill. The latter condition was particularly insisted upon by the prisoner. The bargain proposed was agreed to by McG., and upon a deed with right of redemption being consented to by the prisoner of the property mentioned above, he sold and delivered to prisoner the $800 worth of furniture required by the latter.

Prisoner had at first ordered the furniture to be delivered at the railway depot, but soon after countermanded that order and requested it to be delivered at his residence at St. Jean Baptiste village, alleging that the hotel was not quite ready for it. At the expiration of the stipulated time, no money being forthcoming, and no demand for the retrocession of the immovable property being asked for, McG. became alarmed and made enquiries about prisoner and the property at Longue Point. He then discovered 1st, That the payment to Mrs. H. for a sum of $200 a year was more than the property could produce yearly; 2nd, That prisoner had never rented any hotel at Ste. Thérèse, nor was he to open any one there or elsewhere; 3rd. That prisoner had played the same trick upon three other furniture dealers, giving them in payment other properties equally valueless; 4th. That all the furniture purchased from him by prisoner had been sold by the latter below cost price, either by private sales or at auction. Being cross-examined, McG, the complainant admitted that the representation which had induced him to part with the furniture was solely that the immovable property offered him was worth between $3,000 and $4,000 over and above all encumbrances, and not the story told by prisoner about his being about to open an hotel at Ste. Thérèse, it being a matter quite indifferent to him where the furniture was put, if he had received the full value of what he had sold.

Evidence was then offered on behalf of the crown to show that a similar fraud had been lately practiced by the prisoner upon other furniture dealers. This was objected to by counsel for the prisoner, on the ground that no other charge could be proved, except that laid in the indictment. In support

of that pretension, section 5 of the Larceny Act, and section 3rd of chapter 26 of the 40th Vict., (1877) were quoted, those sections, it was alleged, pointing out in what instances the common law rule might be departed from. This objection was overruled by the presiding judge, who held that the evidence offered could be received in order to prove the intent of the prisoner.

At the close of the case for the crown the prisoner's counsel submitted that the crown had failed to make out a case against the prisoner, and urged the following grounds,

1st. That the false representation with respect to the opening of an hotel at Ste. Thérèse, not having been that which induced McG. to part with his property, it formed no part in the ingredients forming the crime of obtaining the property by false pretences.

2nd. That the false representation concerning the value of the property offered in payment, could not form the basis of a charge like the present one.

The court maintained the defence on both of these grounds and instructed the jury to acquit the prisoner. *Regina* v. *Durocher*, 12 R. L. 697 ; R. S. c. 164, s. 78.

143.—A clause of a deed by which the borrower of a sum of money falsely declares a property well and truly to belong to him, may constitute a false pretence. *Regina* v. *Judah*, 7 L. N. 371, 385, 396 ; 8 L. N. 124 ; R. S. c. 164, s. 78.

21. Forcible Entry—

144.—On an indictment for forcible entry and detainer of land, evidence of title in defendant is not admissible. *Regina* v. *Cokely*, 13 Q. B. 521.

145.—On a question reserved for the court in appeal, upon the conviction of the prisoner for forcible entry into a dwelling-house,

Held, that the prisoner having entered the house through an open door, and one of the parties with him having been sent out to push in the windows, the prisoner himself taking them off their hinges, the conviction ought not to be disturbed. *Regina* v. *Martin*, 10 L. C. R. 435, Q. B. 1860.

146.—And where the revenue officer, in seizing a distillery, had also seized the out-buildings belonging to the same premises, and the proprietor entered them by force, and in doing so injured one of the employees of the government,

Held, on an indictment, that the proprietor had a right to enter the buildings, and that by force if necessary, and that in doing so he had committed no offence against the government. *Regina* v. *Spelman*, 2 R. L. 709, Q. B. 1867.

147.—Defendants, employees of the Great Western Railway Company, in obedience to orders from the company, went upon the land in question, then in the possession of the Stratford and Huron Railway Company, and occupied by its employees. No actual force was used, but the latter had good reason to apprehend that sufficient force would be used to compel them to leave, and they left accordingly,

Held, that this was a forcible entry within the statutes relating thereto. The judge at the trial having granted a writ of restitution,

Held, that such writ is in the discretion of the presiding judge, which had been properly exercised here. *Regina* v. *Smith, et al.*, 43 Q. B. 369, Ont.

148.—The court refused a writ of restitution after a conviction of forcible entry and detainer, where the premises were a crown reserve, the lease of which had expired. *Rex* v. *Jackson*, Dra. 50. 153

149.—An inquisition for a forcible entry, taken under 6 Hen. VIII. c. 9, must shew what estate the party expelled had in the premises, or the inquisition will be quashed and restitution awarded. The inquisition is also bad if it appear to the court that the defendant had no notice, or that any of the jury had not lands or tenements to the value of 40s., or that the party complaining was sworn as a witness. *Mitchel* v. *Thompson*, *Rex* v. *McKreary*, 5 O. S. 620, 625. 154

150.—The defendants applied for delay in order to give evidence of title, but on the prosecutor consenting to waive restitution in the event of conviction, they were compelled to go to trial, and were convicted. A writ of restitution was afterwards refused: though,

Semble, that it would in any case have been improper to delay the trial for the reason urged. *Regina* v. *Connor*, 2 P. R. 139, C. L. Chamb.—Robinson. 155

151—*Semble*, also, that where the prosecutor has been examined as a witness, restitution should not be granted. *Ibid.* See Evidence; *post*.

152.—The defendant having been convicted at the Quarter Sessions on an indictment for forcible entry, was fined, but that court refused to order a writ of restitution, and the case was removed here by *certiorari*,

Held, that it was in the discretion of this court either to grant or refuse the writ; and under the circumstances it was refused. *Regina* v. *Wightman*, 29 Q. B. 211.

22. Forgery—

153.—Forgery is the falsely making or altering a document to the prejudice of another by making it appear as the document of that person. A simple lie reduced to writing is not necessarily forgery. A bank clerk who makes false entries in the bank books under his control for the purpose of enabling him to obtain money improperly is not guilty of forgery. *Regina* v. *Blackstone*, 7 Can. Law Times 179, Man. Appeal; R. S. c. 165, s. 3. See *In re Smith*, 4 P. R. 215 for a further definition of forgery.

154.—The prisoner, at Woodstock, with intent to defraud, wrote out a telegraph message purporting to be sent by one C. at Hamilton, to McK. at Woodstock, authorizing McK. to furnish the prisoner with funds, which was delivered to McK., and upon the faith of it McK. endorsed a draft for $85, drawn by the prisoner on C., on which the prisoner obtained the money,

Held, that the prisoner was guilty of forgery. *Regina* v. *Stewart*, 25 C. P. 440; R. S. c. 165, s. 46.

155.—On an indictment for feloniously offering, etc., a forged note commonly called a provincial note, issued under the authority of 29-30 Vict. c. 10, Ca. for the payment of $5, it appeared that the prisoners had passed off a note purporting to be a provincial note under the statute, knowing that the figure 5 had been pasted over the figure 1, and the word five over the word one. No evidence was given that the note so altered was a note issued by the government of Canada, but it was shewn further, that when the attention of the prisoners was called to the alteration they said "give it back if it is not good," and that on its being placed on the counter one of them took it up

and refused to return it, or substitute good money for it,

Held, that looking at the particular character of the forgery—*i.e.*, an alteration—and the conduct of the prisoners, the onus was on them to dispute the validity of the writing, if its invalidity would be a defence, and a conviction was sustained. *Regina* v. *Portis, et al.*, 40 Q. B. 214; R. S. c. 165, s. 22.

156.—Making false entries in a book does not constitute the crime of forgery, according to the laws of England or of Canada. *Lamirande, Exp.* 10 L. C. J. 280.

157.—On an indictment for forgery of the prosecutor's name as endorser of a promissory note, the prosecutor swore that he had not endorsed the note, that it was not his writing, that he had never authorized the prisoner to sign his name to the note, and that he was himself unable to write his name, being in fact a marksman; and a son of his also swore that his father was unable to write his name, and was a marksman. The prosecutor also swore that on other occasions he had endorsed for the prisoner, making his mark, and had sometimes authorized the prisoner to write his name,

Held, CAMERON, J., dissenting, that a sufficient *prima facie* case was thus made out: that the prosecutor's evidence was duly corroborated within the meaning of 32-33 Vict. c. 18, s. 54, D., and that the onus was then on the prisoner to shew that he was authorized to use or write the prosecutor's name,

Per CAMERON, J., that the part of the prosecutor's evidence which required to be corroborated, was not that he could not write, but that on this occasion he had not authorized, and on this point there was no

corroboration. *Regina* v. *Bannerman*, 43 Q. B. 547; R. S. c. 174, s. 218.

158.—Where the prisoner was indicted for forging a note for $500, having changed a note of which he was the maker from $500 to $2,500,

Held, that this was a forgery of a note for $500 and that notwithstanding the only fraud committed was on the endorser. *Regina* v. *McNevin*, 2 R. L. 711; R. S. c. 165, s. 28.

159.—A fugitive from Canada was surrendered by the United States authorities on a charge of forgery, that being one of the offences enumerated in the treaty. The prisoner was put on his trial, and convicted for feloniously uttering a forged promissory note for the payment of money. On a case being reserved on an objection that the prisoner could not be tried for any offence but that for which he had been extradited,

Held, that the charge of forgery included the lesser charge of uttering forged paper, and the conviction was maintained. *Regina* v. *Paxton*, 3 L. C. L. J. 117.

160.—In an indictment for forging a receipt it must be alleged that such receipt was either for goods or money, etc., as mentioned in C. S. C. c. [illegible] s. 9; *Regina* v. *McCorkell*, 8 L. C. J. 283; R. S. c. 165, 29.

161.—But in such an indictment it is not necessary to allege that the prisoner committed the offence with intent to defraud any particular person. *Regina* v. *Hathaway*, 8 L. C. J. 285; R. S. c. 174, s. 114.

162.—The prisoner was a clerk in the office of the comptroller of the city of Newark, New Jersey, U.S.A.,

his duty being to make proper entries of moneys received for taxes in the official books of the comptroller provided for that purpose. Having received a sum of money for taxes, he entered the correct amount at first, and then erasing the true figures he inserted a less sum, with intent to benefit himself by the abstraction of the difference between the two, and to deceive the comptroller and the municipality,

Held, that the offence was forgery, and that the prisoner had been properly committed for extradition.

It is not necessary to constitute the crime of forgery, that another's right shall have been actually prejudiced, the possibility of prejudice to another is sufficient; and if publication be necessary, the books in question being of a public character, the forged entry in them must be regarded as having been published as soon as made.

Semble, *per* PROUDFOOT, J.—It is not necessary for purposes of extradition that the crime charged should have been such an act as would have constituted that crime at the date of the Ashburton Treaty. It is sufficient if it constituted the crime in question at the date of its alleged commission. *In re William A. Hall*, 3 Ont. Rep. 331, Q. B.

163.—The prisoner, who was collector of the county of Middlesex, in the state of New Jersey, kept a book in which to enter the payment and receipts of all moneys received by him as such collector, and which was the principal book of account kept by him. The book was purchased with the money of the county, and was kept in the collector's office, and was left by him at the close of his term of office; it was by statute open to the inspection of those interested in it, and con-

tained the certificate of the county auditors as to the correctness of the m. tters therein contained.

Held, that the book was the public property of the county, and not the private property of the prisoner.

After the book had been examined by the proper auditors as to the amounts received and paid out by and through the prisoner as such collector, and a certificate of the same made by them, the prisoner, who was a defaulter, with intent to cover up his defalcation, altered the book by making certain false entries therein of moneys received and paid out, and changing the additions to correspond. Some of these entries were by the prisoner himself, and others by his clerk under his direction, but the clerk on finding that such entries were false changed them back.

Held, that this constituted forgery at common law, as well as under our statute 32-33 Vict. c. 19.

Held, also, that under the Extradition Act of 1877, 40 Vict., c. 25, D., it is essential that the offence charged should be such as if committed here would be an offence against the laws of this country. The offence, however, was also proved to be forging by the laws of New Jersey. *In re Jarrard*, 4 Ont. Rep. 265, Q. B.

164.—The alteration of a $2 Dominion note to one of the denomination of $20, such alteration consisting in the addition of a cipher after the figure 2, wherever that figure occurred in the margin of the note, was forgery, and that the prisoner was rightly convicted therefor. *Regina* v. *Bail*, 7 Ont. Rep. 228, Q. B.; R. S. c. 165, s. 13.

165.—The prisoner was indicted along with W.; the first count charging W. with forging a circular note of the

National Bank of Scotland, and the second with uttering it knowing it to be forged. The prisoner was charged as an accessory before the fact. Evidence was admitted showing that two persons named F. and H. had been tried and convicted in Montreal of uttering similar forged circular notes printed from the same plates as those uttered by W.: that the prisoner was in Montreal with F., they having arrived and registered their names together at the same hotel, and occupied adjoining rooms; that after F. and H. had been convicted on one charge, they admitted their guilt in several others; and that a number of these circular notes were found on F. and H., which were produced at the trial of the prisoner. Before the evidence was tendered, it was proved that the prisoner was in company with W., who was proved to have uttered similar notes. Evidence was also admitted shewing that a large number of the notes were found concealed, at a place near where the prisoner had been seen, and were concealed, as was alleged by him, after W. had been arrested,

Held, that the evidence was properly received in proof of the guilty knowledge of the prisoner. *Regina* v. *Bent*, 10 Ont. Rep. 557, Q. B.; 5 Can. Law Times 589.

166.—The plaintiff in error, was indicted for having feloniously forged a certain promissory note, and by a second count he was charged with having feloniously uttered a promissory note with intent to defraud. The prisoner demurred to the indictment, but the demurrer was overruled, and he was convicted and sentenced to one year's imprisonment. He applied to have a case reserved, but was refused, and now he brought the same objections befor the court by

means of a writ of error. The grounds of error were, first, that it was not stated in the indictment that the promissory note alleged to have been forged, was for the payment of money, and, secondly, that the note was not sufficiently described in the indictment. It was merely stated that it was a promissory note. Section 49 of the statute covered the second objection, it being no longer necessary to describe the note in the indictment. There remained the first objection complaining of the absence of the words "for the payment of money." In the form appended to the statute, there appeared the expression "promissory note, etc." did the "etc." refer to the words "for the payment of money," or did the "etc." refer to the other instruments? There was a doubt as to what it referred to, and therefore the form was not clearly indicative of the intention of the legislature. The court had, therefore, to look into the precedents. A great many had been cited, but none of them touched this very question. Some were under the old law, and the decisions did not apply. The case, then, was in this position: the words "for the payment of money" were in the enacting clause of the statute, and there was no offence if it was not a promissory note "for the payment of money." Against this it was urged that a promissory note, under our civil code, cannot be for anything else than the payment of money. It might be observed that the words formerly applied to bills of exchange as well. Now the words "for the payment of money" were not added in the case of bills of exchange, but the legislature had left attached to the offence of forging a promissory note the condition that it must be for the payment of money. When the court referred to indictments in England it was impossible to find one in which the

words "for the payment of money" were not found, unless the instrument was described so as to show that it was for the payment of money. In the United States also this was the universal practice. It would be a dangerous practice if the court were to allow indictments to be drawn in a form different from that prescribed by the law and universally practised up to the present time. The counsel for the crown was not able to cite a single instance where these words had been omitted. The court had examined a number of indictments from among the records of the court, and in every case the words were inserted. The court was not disposed to make a precedent which would sanction a departure from this practice. *Regina* v. *Kelly*, 3 Steph. Dig. 222, Que.; R. S. c. 165, s. 28.

167.—The prisoner Cunningham was indicted and tried at the October Term, 1884, of the Supreme Court of Nova Scotia at Halifax, Macdonald, C.J., presiding. There were three counts in the indictment, charging,

1. That the said James Cunningham did feloniously offer, utter, dispose of, and put off, knowing the same to be forged, a certain check or order for the payment of money, which said forged order is as follows, that is to say—

"No. E. 43460. "Halifax, N. S., Feb. 13th, 1884.

"Merchants' Bank of Halifax:

"Pay William McFatridge, or order, two hundred and twenty-four dollars and seventeen cents ($224.17.)

"(Signed) "Longard Bros.

And endorsed as follows:—"W. McFatridge," with intent to defraud.

2. That the said James Cunningham, afterwards, to wit, on the day and year aforesaid, having in his custody and possession a certain other order for the payment of money, which said last-mentioned order is, as follows, that is to say—

"No. E. 43460. "Halifax, N. S., Feb. 13th, 1884.

"Merchants' Bank of Halifax:

"Pay William McFatridge, or order, two hundred and twenty-four dollars and seventeen cents ($224.17.)

"(Signed, "Longard Bros."

He, the said James Cunningham, afterwards, to wit, on the day and year last aforesaid, at Halifax aforesaid, feloniously did forge on the back of said last-mentioned order a certain indorsement of said order for the payment of money, which said forged indorsement is as follows, that is to say—"W. McFatridge," with intent to defraud.

3. That the said James Cunningham, afterwards, to wit, on the day and year aforesaid, feloniously did offer, utter, dispose of and put off, a certain other forged order for the payment of money, which forged order is as follows, that is to say—

"No. E. 43460. "Halifax, N. S., Feb. 13th, 1884.

"Merchants' Bank of Halifax:

"Pay William McFatridge, or order, two hundred and twenty-four dollars and seventeen cents ($224.17.)

"(Signed, "Longard Bros."

And endorsed "W. McFatridge." With intent thereby then to defraud.

Counsel for the prisoner, before the jury was sworn, pleaded to the jurisdiction of the court on the ground that the indictment charged an offence or offences different from that for which the prisoner was extradited, to which plea the attorney-general demurred. Judgment was pronounced, sustaining the demurrer and the trial proceeded. The prisoner was convicted on the first and third counts of the indictment, and acquitted on the second. At the close of the trial, counsel for the prisoner renewed his application, and the C. J. agreed to reserve for the opinion of the judges and submitted :

(1) Whether the prisoner was indicted and tried for another and different offence, or other and different offences, than that for which he was extradited at the instance of the Government of Canada ; and if so, whether the court had jurisdiction to try and convict the prisoner of such offence or offences.

(2) Whether the evidence on the part of the crown, as reported herewith, is sufficient to sustain a conviction on the first and third counts of the indictment or on either of those counts. The papers put in evidence on the trial were to be considered and read as part of the case. The majority of the Supreme Court of Nova Scotia (Rigby, Smith and Thompson, JJ., McDonald, C.J., and Witherbe, J., dissenting),

Held, that the prisoner was properly convicted on the third count.

Per RIGBY, J., delivering the judgment of the court. Before the endorsement of the original cheque it was an order for the payment of the sum named to McFatridge, and to him only; but when endorsed it became literally an order for the payment of such sum to whomsoever shoul present it ; and as the evidence was

sufficient to justify the jury in concluding that it was uttered by the prisoner, knowing that the endorsement was forged, it would appear at first sight that the verdict upon the third count at least was sustained by the evidence, which is one of the questions referred to us under the case reserved. It was contended, however, on behalf of the prisoner, that as the Dominion Act 32-33 Vict. c. 19, provides, especially in s. 26, for the offence of knowingly uttering an order for the payment of money with a forged indorsement, that the verdict on the count in question was not sustained by the evidence, because the indorsement of such an order should have been charged in terms.

The strongest case that I have been able to find for the contention is that of *Rex* v. *Arscott*, cited by the prisoner's counsel from 6 Car. and Payne, p. 408. The prisoner in that case was indicted for forging an indorsement for the payment of money, and also with the uttering of the indorsement; and it was held that as the section of the statute relating to the offence under which he was indicted (section 1 Will. IV., c. 66,) provided for the forging of orders, and while it also provided for the forging of indorsements of bills of exchange and other similar instruments which were designated, did not mention the indorsement of orders, it was therefore to be concluded that the legislature did not intend that the forging of the indorsement of the latter instrument was to be a punishable offence, although it would really be the forging of an order, and as such might be said to be within the terms of the Act.

Our Act, however, is very different from the Imperial Act, under which that case was decided, inasmuch that it draws no such distinction as would exclude from the

category of criminal offences the forging of the instrument, which constitutes a part of the order set out in the third count.

As the instrument is described in the first count as a cheque, the forgery of which would in no sense be supported by proof of the forgery of the indorsement of a cheque, I think the conviction upon that count cannot be sustained.

On behalf of the crown it was urged that the learned Chief Justice had no jurisdiction to reserve the case, because the questions submitted did not arise "on the trial," and therefore were not within the provisions of chapter 171 in the appendix to our revised statutes. I was of opinion at the argument, and still think, that the second question submitted to us did arise at the trial, and that we should assume that it did so arise unless the contrary was made to appear.

The other question reserved was, "whether the prisoner was indicted and tried for another and different offence, or other and different offences, than that for which he was extradited at the instance of the Government of Canada; and if so, whether the court had jurisdiction to try and convict the prisoner of such offence or offences."

As it appears the same question was raised at the trial by demurrer, and was decided by the presiding judge against the prisoner, it is too late to raise it now in this way, as appears by the decision in *Rex* v. *Faderman, et al.*, Denison, 572.

Per WEATHERBE, J., dissenting,—It is admitted that the evidence is not sufficient to convict on the first count, and the only question is whether the verdict can be sustained on the third. It is argued, however, that an indorsement itself of an order to pay is an order.

That the order to pay McFatridge or order by the indorsement of the name of McFatridge, the payee, becomes an order to pay the bearer, and therefore that the charge as stated is supported by the proof.

What we have to do is to interpret the word "order" in the third count. Is the above a strained interpretation, and can the word have two different meanings in the same count? We must not forget that the legislature has provided for the two distinct cases of the uttering of a forged "order" and of the uttering of a forged "indorsement of an order." If the statute contemplates both a forged order and a forged indorsement of an order, would not the term "order" applied to the instrument in question, refer to the main instrument in contradistinction to the indorsement, even supposing that the whole instrument might be called, in the words of Coleridge, J., in Autery's case, (1 Dearsley and Bell, 29[illegible]er some circumstances," a forged order for [illegible] payment of money. In view of the particular statute in question, upon principle, I should think words "order for the payment of money" should be construed to apply, as they would be considered to refer in the ordinary sense, to the main body of the instrument and not to the indorsement, and in the absence of authority to the contrary I must express this to be upon consideration the best opinion I can form on the subject.

On appeal to the Supreme Court of Canada,

Held, *per* FOURNIER, HENRY AND TASCHEREAU, JJ., (RITCHIE, C.J., AND STRONG, J., dissenting). that evidence of the uttering of a forged indorsement of a negotiable check or order is insufficient to sustain a conviction on a count of an indictment charging the uttering of a forged check or order. On the second question re-

served, therefore, the judgment of the court below should be reversed and the prisoner ordered to be discharged.

Per RITCHIE, C.J.—The question raised by the demurrer was not properly before the Court in Appeal, the court below having been unanimous with respect to it.

Per STRONG, J.—The court below rightly held, on the authority of *Rex v. Vaderman*, Den. C. C. 572, that the question raised by the demurrer was not properly before the court, the Chief Justice having given judgment on the demurrer over-ruling it at the trial. Moreover, there was nothing in the law under which the prisoner was extradited to prevent the court from trying him for any offence for which he was, according to the law of the Dominion, justiciable before it.

Appeal allowed. *Queen v. Cunningham*, 16 March, 1885. Cassels' Digest, 111 ; R. S. c. 165, s. 30 ; c. 142, s. 23.

168.—It is not necessary to allege that the indorsement in question had been declared false by any competent authority, etc., nor that it was obtained with intent to convert the note or paper-writing into money. *Regina* v. *Boucher*, 10 R. L. 183, 1880; R. S. c. 165, s. 30.

169.—A charge of forgery cannot be brought up for trial before a judge of the court of Queen's Bench under the Speedy Trials Act. *Regina* v. *Scott*, 6 Can. Law Times, 311, Ont. *Roy* v. *Malouin*, 2 Q. B. R. 66 ; 4 L. N. 372, Que.

170.—The court of quarter sessions has no jurisdiction to try the offence of forgery. *Regina* v. *McDonald*, 31 Q. B. 337. See 178 *post*.

171.—"Mr. McK., Sir,—Would you be good enough as for to let me have the loan of $10 for one week or so, and send it by the bearer immediately, and much oblige your most humble servant.

(Signed), I. Almiras, P. P."

Held, not an order for the payment of money, but a mere request. *Regina* v. *Reopelle*, 20 Q. B. 260; R. S. c. 165, s. 29.

172.—"$350. Carick, April 10th, 1863. J. McL., tailor,—Please give Mr. A. L. to the amount of $3.50, and by doing so you will oblige me,"

Held, an order for the payment of money, and not a mere request. *Regina* v. *Steel*, 13 C. P. 619; R. S. c. 165, s. 29.

173.—A writing not addressed to any one may be an order for the payment of money, if it be shown by evidence for whom it was intended. In this case the order was for $15, in favour of "bearer or R. R.," and purported to be signed by one B. The prisoner in person presented it to M., representing himself to be the payee, and a creditor of B.,

Held, that it might fairly be inferred to have been intended for M.; and a conviction for forgery was sustained. *Regina* v. *Parker*, 15 C. P. 15; R. S. c. 165, s. 29.

174.—Indictment for offering, etc., the following instrument knowing it to be forged:—"I, J. H., do agree to W. C., of W., the full rite and privilege of all the white oke and elm and hickory lying and standing on lot 26, south part, on the 3rd concession, Plymp., for the sum of $30, now paid to H. by C., the receipt whereof is

hear by me acknowledged." The jury having convicted the prisoner,

Held, upon a case reserved, 1st, that the instrument forged being set out *in hæc verba* in the indictment, the description of its legal character would be surplusage, and was unnecessary; 2nd, that under section 29, C. S. C. c. 99, it is not necessary to allege an intent to defraud in an indictment for forgery; 3rd, that the averment of the offence being *contra formam statuti* was immaterial, (the objection being that there was nothing in the indictment, which contained this averment, to show that the offence was against any statute); 4th, that the instrument might be construed as an agreement or contract to sell the timber, or a receipt for the payment of money, and in either case came within the 22 Vict. c. 94, and the conviction was sustained. *Regina* v. *Carson*, 14 C. P. 309; R. S. c. 165, s. 46; c. 174, s. 114.

175.—A forged paper purporting to be a bank note, is a promissory note within the 10-11 Vict. c. 9, even though there is no such bank as that named. *Regina* v. *McDonald*, 12, Q. B. 543; R. S. c. 165, s. 18.

176.—A division court bailiff who had an execution against P. M. and H. M. arranged to accept a note made by A. M., payable to A. D. F. The note was drawn up by the bailiff and handed to the prisoner to obtain the indorsement of A. D. F. The prisoner shortly afterwards returned it with the name A. D. F. indorsed upon it. The note was then handed to A. M., who signed it and delivered it to the bailiff. The indorsement was a forgery,

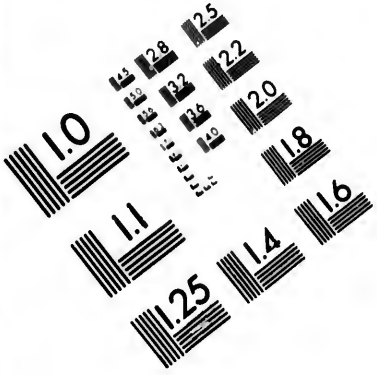
Held, that an indictment for forgery would not lie, for at the time when A. D. F.'s name was affixed, the

instrument was not a promissory note by reason of the maker's name not being then signed to it; and neither would a count for altering lie, for after it was signed by A. M. it was never in the prisoner's possession. *Regina* v. *McFee*, 7 Can. Law Times 74; 13 Ont. R. 8; R. S. c. 165, s. 28.

177.—A promissory note had been drawn by the prisoner, payable two months after date to the order of one S., and afterwards endorsed by said S., and the prisoner then altered the note from two to three months and discounted it at a bank. It was objected that the forgery or uttering, if any, was a forgery of, or the uttering of a forged indorsement, (the note having been made by himself) and that there was no legal evidence of an intent to defraud.

Held, that the altering the note while in his own possession after it was indorsed was a forgery of a note, and not of an indorsement: and that the passing of the note to the third party, who was thereby defrauded, was sufficient evidence of an intent to defraud. *Regina* v. *Craig*, 7 C. P. 239; R. S. c. 165, s. 28.

178.—Defendant was convicted at the quarter sessions on an indictment for uttering a promissory note purporting to be made by one F., for £4 10s., with intent to defraud, knowing it to be forged. It appeared that some boys had been amusing themselves with writing promissory notes and imitating persons' signatures, and among them was one with F.'s name. The papers were put into the fire, but this note was carried up the chimney by the draft, and fell into the street, where it was picked up by defendant. A person who was with him at the time said that he thought it was not



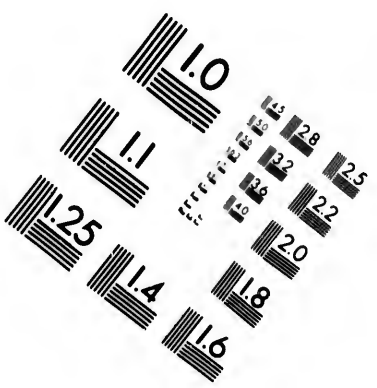
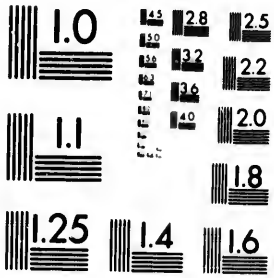
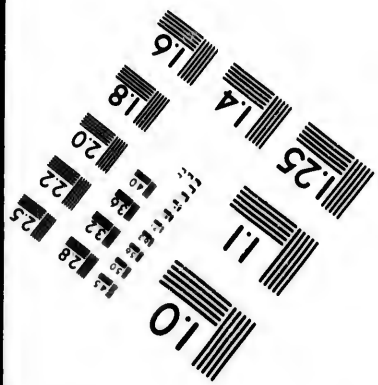
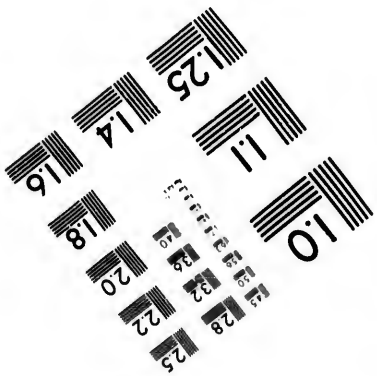


IMAGE EVALUATION
TEST TARGET (MT-3)







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genuine, and advised him to destroy it: but the defendant kept it, and afterwards passed it off, telling the person who took it that it was good,

Held, that the defendant was guilty of a felonious uttering; but the conviction was quashed, for the indictment was defective in not stating expressly that the note was forged, or that defendant uttered it as true; and the case should not have been tried at the quarter sessions. *Regina* v. *Dunlop*, 15 Q. B. 118; R. S. c. 174, sched. No. 2,

179.—Prisoner was indicted for forging an order for the delivery of goods. The only witnesses examined were the person whose name was forged, and the person to whom the order was addressed, and who delivered the goods thereon: and there was no corroborative testimony,

Held, under 10-11 Vict. c. 9, s. 21, not sufficient evidence. *Regina* v. *Giles*, 6 C. P. 84: R. S. c. 174, s. 218.

180.—An indictment will not lie for forging or altering the assessment roll for a township deposited with the clerk. *Regina* v. *Preston*, 21 Q. B. 86.

181.—A prisoner was arrested in Upper Canada for having committed in the United States "the crime of forgery by forging, coining, etc., spurious silver coin," etc.,

Held, 1st, that the offence as above charged did not constitute the crime of "forgery" within the meaning of the Extradition Treaty or Act; 2nd, that it certainly is not the crime of forgery under our law, and therefore the prisoner could not be extradited. *In re Smith*, 4 P. R. 215; R. S. c. 165, s. 3.

182.—*Held*, that a person convicted of forgery or uttering forged paper in the United States, who escaped to Canada after verdict but before judgment, was liable to be delivered up under the Ashburton Treaty and the Provincial Statute passed to give effect to that treaty. *In re Warner*, 1 L. J. N. S. 16.

183.—*Semble*, that the execution of a deed by prisoner in the name of and representing himself to be another, may be forgery, if done with intent to defraud, even though he had a power of attorney from such person, if he fraudulently conceal the fact of his being only such attorney, and assume to be the principal. *In re Regina* v. *Gould*, 20 C. P. 154.

23. Frauds

184.—An indictment charging an insolvent person with making away with and concealing his goods, to the value of more than fifty dollars, with intent to defraud his creditors, without specifying what goods and what value, was held to be bad, and was quashed on motion. *Regina* v. *Patoille*, 4 R. L. 131, Q. B. 1872; R. S. c. 173, s. 28.

185.—The fraudulent removal of goods by a tenant, is, under 11 George II. c. 19, s. 4, a crime; and a conviction therefor was consequently quashed with costs against the landlord, because the defendant had been compelled to give evidence on the prosecution. *Regina* v. *Lackie*, 7 Ont. R. 431; 5 Can. Law Times, 130; R. S. c. 173, s. 26.

186.—To cheat and defraud private individuals is not necessarily a penal offence. *Regina* v. *Roy*, 11 L. C. J. 89, Q. B. 1867.

24. Gaming—

187.—The defendant being the proprietor of a newspaper, advertised in it that whoever should guess the number nearest to the number of beans which had been placed in a sealed glass jar in the window on a public street, should receive a $20 gold piece, the person making the next nearest guess, a set of harness, and the person making the third nearest guess, a $5 gold piece: any person desiring to compete to buy a copy of the newspaper, and to write his name and the supposed number of the beans on a coupon to be cut out of the paper. The defendant was convicted of a contravention of C. S. C. c. 95.

Held, that as the approximation of the number depended as much upon the exercise of skill and judgment as upon chance, this was not a "mode of chance" for the disposing of property within the meaning of the Act.

Per HAGARTY, C.J.—The Act applies to the unlawful disposal of some existing real or personal property. In this case there were no specific gold coins, nor was there any particular set of harness, to be disposed of, which might have been forfeited pursuant to section 3 of the Act, and therefore the conviction was bad on that ground. *Regina* v. *Dodds*, 4. Ont. Rep. 390, Q. B.; R. S. c. 159, s. 2.

The defendant placed in his shop window a globular glass jar, securely sealed, containing a number of buttons of different sizes. He offered to the person who should guess the number nearest to the number of buttons in the jar, a pony and cart, which he exhibited in his window, stipulating that the successful one should buy a certain amount of his goods,

Held, that as the approximation of the number of buttons depended upon the exercise of judgment, observation, and mental effort, this was not a "mode of chance" for the disposal of property within the meaning of the Act.

Quære, whether the defendant should not get the costs of quashing conviction made to test the law in such a case. *Regina* v. *Jamieson*, 7 Ont. Rep. 149, Q. B.; R. S. c. 159, s. 3.

25. Kidnapping

188.—The plaintiff in error having been committed to gaol for trial on a charge of unlawfully and forcibly kidnapping and taking one Bratton without authority, with intent to transport him out of Canada, against his will, was, on the 24th of June, 1872, brought before the county judge, by whom he consented to be tried under the 32-33 Vict. c. 35. In the record drawn up under that statute, it was charged that he did feloniously and without authority, forcibly seize and confine one B. within Canada, etc., (without alleging any intent), and that he did afterwards feloniously kidnap one B. with intent to cause the said B. to be unlawfully transported out of Canada against his will, etc. The judge fixed the 3rd of July for the trial, and on that day the prisoner said he was ready, but upon the request of counsel for the crown the trial was postponed till the 15th of July, when the prisoner was found guilty on both counts. An amendment of the indictment was allowed by the judge, changing the name of Rufus Bratton to James Rufus Bratton. In the notice required from the sheriff to the judge, by 32-33 Vict. c. 35, s. 2, only the charge contained in

the second count of the indictment was referred to. On errors being assigned,

Held, that the sessions had jurisdiction over the offence, and so the county judge had power to try it,

Held, also, that the record was properly framed, in stating the offence charged in such form as the depositions or evidence shewed it should have been; and that the judge's jurisdiction was not confined to the trial only of the charge as stated in the commitment,

Held, also, that the judge had power to postpone the trial, and the record was not defective in not stating the cause of the adjournment. By 32-33 Vict. c. 20, s. 69, under which the charge was made, "Whosoever, without lawful authority, forcibly seizes and confines or imprisons any other person within Canada, or kidnaps any other person with intent" to cause such person to be secretly confined or imprisoned in Canada, or to be unlawfully sent or transported out of Canada against his will, or to be sold or captured as a slave, is guilty of felony,

Held, WILSON, J., dissenting, that the intent required applied to the seizure and confinement in Canada, as well as to kidnapping; and that the first count therefore was defective in not stating any intent. Upon this ground the judgment was reversed, and under C. S. U. C. c. 113, s. 17, the record was remitted to the judge to pronounce the proper judgment, which would be upon the second count only,

Held, also, that the amendment was authorized, under 32-33 Vict. c. 29, ss. 1 and 71, D.,

Held, also, that the court would not presume that the two counts referred to the same offence, and if it were so, duplicity would not be a ground of error,

Held, also, no objection that the jurisdiction conferred by 32-33 Vict. c. 25, was not shewn, for the record and judgment were in the form prescribed by that Act,

Held, also, that the sheriff's notice was sufficient, as 32-33 Vict. c. 35, s. 2, requires it only to state the "nature of the charge" preferred against the prisoner. The prisoner having been sent to the penitentiary, a *habeas corpus* was ordered to bring him up to receive the proper judgment. *Cornwall v. Regina*, 33 Q. B. 106; R. S. c. 162, s. 46.

26. Larceny—

189.—The fact that the sum stolen was described in brackets as "legal tender notes" is unimportant, as the coin or note need not be specified. *Regina* v. *Paquet*, 2 L. N. 140; R. S. c. 174, s. 129.

190.—The prisoner was indicted for larceny under the Indian Act of 1880, 43 Vict. c. 28, s. 66 (D), and was convicted,

Held, WILSON, J., dissenting, that he ought not to have been convicted because, *per* ARMOUR, J., the wood, the subject of the alleged larceny, was not in the absence of satisfactory information supported by affidavit, "seized and detained as subject to forfeiture" under the Act; and because, *per* O'CONNOR, J., the affidavit required by section 64 had not been made, and was a condition precedent to a seizure.

Per WILSON, C.J.—Section 64 cannot apply to trees found by the officer of the department in the act of being removed from the lot on which they have been wrongfully cut, or where there can be no doubt they have been unlawfully cut, for such an application

would make it impossible to effect a seizure in such cases. *Regina* v. *Fearman*, 10 Ont. Rep. 660; 6 Can. Law Times, 121 Ont.: R. S. c. 164, s. 50; c. 43, s. 55.

191. —*Held*, CAMERON, J., dissenting, that the prisoner was properly convicted, on the evidence set out in the report, of the larceny of certain articles connected with a mill which he had rented from the prosecutor, and that in the manner in which the case was reserved, the only question for the court was, whether in any view of the evidence the prisoner could have been found guilty. *Regina* v. *Stewart*, 43 Q. B. 574; R. S. c. 164, s. 57.

192. —The prisoner was convicted before a county judges' criminal court on a charge of receiving stolen goods, knowing them to have been feloniously stolen, and was sentenced to imprisonment. On an application for a *habeas corpus*,

Held, that the court was a court of record, and that under R. S. O. c. 70, s. 1, there was therefore no right to the writ,

Held, also, that the judge had power to imprison,

Held, also, that if an indictment for stealing certain articles be sustainable as to some of the articles stolen, the conviction is good, although the indictment may contain any number of articles as to which an indictment could not be sustained. *Regina* v. *St. Denis*, 8 P. R. 16; R. S. c. 164, s. 82.

193. —Where an indictment for larceny was drawn according to the forms given by C. S. C. c. 99, s. 51, it was, on motion for arrest of judgment, held valid. *Regina* v. *Dorion*, 8 L. C. J. 281, Q. B. 1857; R. S. c. 174, Sched. No. 2.

194.—And where the prisoner, after being tried and found guilty of stealing money, moved for arrest of judgment and a new trial, on the ground, among other things, because the indictment was faulty and defective, inasmuch as the species of "money," whether bank notes or coin, which the defendant was accused of stealing, was not specified in said indictment, the application was rejected. *Regina* v. *Driscoll*, 8 L. C. J. 288, Q. B. 1862; R. S. c. 174, s. 129.

195.—An indictment for larceny will not lie against a partner on account of the partnership property. *Regina* v. *Lowenbruck*, 18 L. C. J. 212, Q. B. 1874: R. S. c. 164, s. 58.

196.—A shareholder in a joint stock company cannot commit larceny from the company, as, being a shareholder, he is joint owner of the funds and property of the company. *Regina* v. *St. Louis, et al*, 10 L. C. R. 34, R. S. c. 164, s. 58.

197.—Where one of the partners of a tanning firm, which had undertaken to tan a large quantity of hides on a commission of profits, the owner reserving to himself the right of sale of the hides, shipped them first toward New York, where the owner resided, and then bringing them back to Montreal, sold them under an assumed name, and pocketed the proceeds,

Held, that this was no *vol* as understood by the law of Lower Canada. *Fawcett, et al.* v. *Thompson, et al.*, 4 L. C. J. 234, S. C. 1859.

198.—Where the prisoner was indicted for stealing "an original document, to wit, an act or deed of transfer," made before notaries, and, on a second count,

with stealing a certain notarial minute, to wit, "an authentic copy of an act or deed of transfer,"

Held, that, by the statute in force in Canada, it is not an offence to steal an authentic copy of an act or deed passed before a notary. *Regina* v. *McGinnis*, 7 L. C. J. 311, Q. B. 1862; R. S. c. 164, ss. 12, 13, 2.

199.—The proprietor of a quantity of broom corn delivered it to defendant under an agreement that, when defendant should have manufactured it into brooms, he should not sell them, but that the clerk of the plaintiff should sell them on his, plaintiff's account, and when that was done, he would deduct his advances from the proceeds of the sale, and defendant should have the balance. Defendant, having supplied the smaller material requisite, manufactured the brooms and converted them to his own use and profit, and on being indicted for a larceny

Held, that the delivery of the broom corn to defendant was a bailment to him, and that fraudulently converting the brooms to his own use was larceny under the provisions of C. S. C. c. 92, s. 55. *Regina* v. *Leboeuf*, 9 L. C. J. 245, Q. S. 1874; R. S. c. 164, s. 4.

200.—An indictment for larceny on board of a British vessel "upon the sea" is sufficient, without saying "upon the high seas." *Regina* v. *Sprungli*, 4 Q. L. R. 110, 1878; R. S. c. 174, s. 8.

201.—Prisoner appeared to answer to a charge of having, on the 26th October last, stolen the sum of $568.75, the property of P. T. A second count in the indictment was to the effect that he had received the money knowing it to have been stolen. Prisoner and P. T. were in partnership from May to August, when their 203

premises were burnt down. They thereupon dissolved partnership, it being agreed that the assets should be equally divided between them. There were two insurance policies among the assets, payment being claimed upon them on October 26th. P. and prisoner went to the insurance office to settle the matter, and obtained a cheque for the amount claimed. This the prisoner took charge of, instead of sharing the sum equally as had been agreed, and criminal proceedings were instituted. P. T., carpenter, deposed that he had been in partnership with prisoner from May to August, 1881. Their place of business was burnt down on July 29th, and on the 17th of August their partnership was dissolved, an agreement being made to share the profits equally. A policy was held by the firm against the Dominion Insurance Company, and another against the Canada Insurance Company, the two amounting to $20,000. The Dominion Company paid them a cheque for their claim on October 26th, and they proceeded together to the bank to get it cashed. The prisoner received bills for the amount, but when witness demanded his share prisoner declined to comply. The witness called for the money several times, but on each occasion was refused. Counsel submitted that the crown had no case, as the money was proved never to have been in physical possession of T., and hence no larceny could have taken place. His honor concurred, and charged the jury in accordance. A verdict of "not guilty" was returned. *Mooney* v. *Regina*, Q. B. 1882, Que.; 3 Stephen's Dig. 423; R. S. c. 164, s. 5.

203.—A difficulty having arisen between the shipper and the master of a vessel as to the exact quantity of goods shipped, each tendered a bill of lading in conformity

with his pretensions as to the quantity of cargo received. A writ of revendication was then issued, at the instance of the shipper, to attach the cargo, and a guardian appointed by the sheriff. While the cargo was so under seizure and in charge of the guardian, the master put to sea, but was overtaken and brought back to Quebec on an accusation of larceny,

Held, that under the circumstances there was no *animus furandi*, and therefore no larceny, even *custodiâ legis*. *Regina* v. *Salis*, 7 Q. L. R. 226.

204.—An indictment does not lie against an Indian for larceny because of his having cut and removed wood from an Indian reserve and upon land of which he had possession. The proper re arse is by summary prosecution under R. S. C. c. 43, ss. 26, 27, 28. *Regina* v. *Johnson*, 8 Can. Law Times, 334, Ont.

205.—During the nights of the 15th and 16th of January, 1884, thieves broke into the broker's office of one D. in Quebec, and carried off some $4,000. The money was in bank bills, Dominion notes, and gold and silver. A silver watch also was stolen. The next day the police arrested two strangers on suspicion. These persons were searched and part of the stolen money found on them. During the next few days, the newspapers published long accounts of the robbery, and some details regarding one of the persons arrested, who was recognized as an old offender. This person, on the afternoon following the robbery, went to the residence of the defendant L., who kept a book store, and represented himself as the nephew of L., and after calling on the family upstairs and learning that L. was absent from the city, he came down stairs to the bookstore, and introduced himself to F., the other

defendant. His story to him was, that he had come to Quebec with some Americans to purchase horses, and deposited with F. a parcel of bank notes and a small bag containing gold and silver money, and also a silver watch. On his return to his boarding house the man was arrested. L., on his return from Three Rivers in the evening, was informed of the circumstances by F., his clerk, and that the package had been placed in the vaults for safe keeping during the evening. F., at the request of L., took the parcel out of the vault. It was proved that at this time L. knew who it was made the deposit, and that he had before been condemned for theft and similar offences,

Held, that under the above circumstances, the defendants were guilty of receiving stolen goods knowing them to be stolen, and the fact that they derived no benefit from the theft did not relieve them from the responsibility of concealing it. *Regina* v. *Fournier et al.*, 10 Q. L. R. 35, Que.; R. S. c. 164, s. 82.

206.—On a charge of burglary only, the prisoner cannot be convicted of receiving stolen goods, and a verdict under such circumstances will be quashed on writ of error. *Laurent* v. *Regina*, 1 Q. B. R. 302, Que.; R. S. c. 174, ss. 193, 199.

207.—Upon an indictment for receiving stolen goods, knowing them to be stolen, the evidence showed that all the goods were found on the defendant's premises, some in the stable and some concealed. The prisoner denied all knowledge of the articles, but, when told that the officer had a search warrant to search the premises, he was seen to wink at one of his servants in a suspicious manner,

Held, that, although evidence of possession might support an indictment for larceny, it would not suffice

to convict of feloniously receiving the goods; and it was necessary to prove that the property was unlawfully in the possession of some one else before it came to the prisoner. The conviction was therefore quashed. *Regina* v. *Perry*, 3 L. N. 12; 10 R. L. 65, 1879; 26 L. C. J. 24; R. S. c. 174, s. 199.

208.—Where an indictment contains one count for larceny, and allegations in the nature of counts for previous convictions for misdemeanors, and the prisoner, being arraigned on the whole indictment, pleads "not guilty," and is tried at a subsequent assize, when the count for larceny only is read to the jury,

Held, no error, as the prisoner was only given in charge on the larceny count. *Regina* v. *Mason*, 22 C. P. 246, Ont.

209.—The conviction stated that "Joseph Caswel had on his premises a quantity of chopped wood, to wit, about half a cord, belonging to Thomas Fulton, which said Thomas states was taken and stolen from him, and which said Joseph could not satisfactorily account for its possession,"

Held, that the conviction was bad, because 32-33 Vict. c. 21, s. 25, under which it was made, applies to trees attached to the freehold, not to trees made into cordwood, and because cordwood is not "the whole or any part of a tree" within the statute. *Regina* v. *Caswel*, 33 Q. B. 303; R. S. c. 164, s. 22.

210.—A party cannot be prosecuted under 4-5 Vict. c. 25, for stealing fruit "growing in a garden," unless the bough of the tree upon which the fruit is hanging be within the garden; it is not sufficient that the root of the tree be within the garden. *McDonald* v. *Cameron*, 4 Q. B. 1; R. S. c. 164, ss. 18, 19.

211.—In an indictment charging the prisoner with stealing bank bills, the words "of the moneys, goods, and chattels," may be rejected as surplusage. *Regina* v. *Saunders*, 10 Q. B. 544; R. S. c. 174, Sched. No. 2.

212.—An indictment for breaking into a church and stealing vestments, etc., there, describing the goods stolen as the property of "the parishioners of the said church,"

Held, bad. They must be averred to belong to some person or persons individually. Such a defect is not within the 18 Vict. c. 92, ss. 25, 26; *Regina* v. *OBrien*, 13 Q. B. 436; R. S. c. 174, s. 117.

213.—The prisoner was indicted for stealing the cattle of R. M. At the trial R. M gave evidence that he was nineteen years of age: that his father was dead, and the goods were bought with the proceeds of his father's estate; that his mother was administratrix, and that the witness managed the property, and bought the cattle in question. On objection taken, the indictment was amended, by stating the goods to be the property of the mother, and no further evidence of her administrative character was given, the county court judge holding the evidence of R. M. sufficient, and not leaving any question as to the property to the jury. On a case reserved,

Held, 1st, that there was ample evidence of possession in R. M. to support the indictment without amendment; 2nd, that the judge had power to amend, under C. S. C. c. 99, s. 78; 3rd, that the conviction on the amended indictment could not be sustained, there being no evidence of the mother's representative character, nor any question of ownership by her, apart from such character, left to the jury. *Regina* v. *Jackson*, 19 C. P. 280.

214.—Defendant held the title of certain land belonging to one A., who lived in the United States. A. exchanged it with H. (the prosecutor) for other land, and gave an order on defendant to convey to H. When H. presented this order defendant represented that a claim having been made against him for A.'s debts, he had sworn that the farm belonged to himself; and to keep up the appearance of this being true, it was agreed between H. and defendant that a certain sum should be paid over by H. to defendant on receiving the deed, as for the purchase money, and immediately returned. H. borrowed $700 for the purpose, and they, with H.'s brother and others, went to a solicitor's office, where the deed was drawn, with a consideration expressed of $3,150. The $700 was handed to defendant, and counted over by him as if it were $2,000, and notes given by H. and his brother for the balance, $1,150. Defendant, instead of returning the money and notes, ran away with them,

Semble, that upon these facts an indictment for larceny might have been sustained, if the jury had found that defendant, when he obtained possession of the property, intended to steal it. *Regina* v. *Ewing*, 21 Q. B. 523; R. S. c. 164, s. 85.

The public interest being concerned, the principle of estoppel would not apply, so as to prevent H. from asserting that the payment which he professed to make in good faith was in fact only a pretence. *Ib.*

215.—In an action against a carrier for non-delivery of a package of money, defendant pleaded not guilty. The plaintiffs' witness, their agent, proved that within a week after his delivering the parcel to defendant he found that he had absconded; that he then sued out an attachment against him as an absconding debtor;

and that, as he believed, defendant was at the time of the trial in gaol, charged with stealing the money,

Held, that this evidence sufficiently showed a felony, as defendant upon it might, as a bailee, be properly convicted of larceny, under C. S. C. c. 92, s. 55; and a nonsuit was ordered. HAGARTY, J., dissenting. *Livingstone, et al.* v. *Massey*, 23 Q. B. 156; R. S. c. 164, s. 4.

216.—The prisoner was charged in the indictment with having received stolen goods on a certain day, and it was proved that the receiving extended over a period exceeding six months,

Held, that the Crown was not bound to elect on which of the receivings it intended to proceed. *Regina* v. *Suprani*, 6 L. N. 269, 13 R. L. 557 Que.; R. S. c. 174, s. 128.

217.—A county court judge trying a prisoner summarily under 32-33 Vict. c. 35 (D), has the same authority to convict of an offence, under 32-33 Vict., c. 21, s. 110 (D), instead of that charged, as a jury has. *Regina* v. *Haines, et al.*, 42 Q. B. 208; R. S. c. 164, s. 85; c. 176, s. 7.

218.—This section applies only to the temporary privation of property. *Regina* v. *Warner*, 7 R. L. 116, 1875; R. S. c. 164, s. 85.

219.—On an indictment for stealing coopers' tools on the 5th of November, 1874, it appeared that the prisoner was not arrested for nearly two years afterwards. During that time—it was not shown precisely when—he was proved to have sold several of the tools at much less than their value, representing that he was

a cooper by trade, and was going to quit it, which was proved to be untrue. It was proved also that he was in the shop from which the tools were stolen the night before they were taken, and frequently; and that when arrested he offered the prosecutor $35 to settle and buy new tools, and offered the constable $100 if he could get clear,

Held, though the mere fact of the possession by the prisoner, after such a lapse of time, might not alone suffice, yet that all the facts taken together were enough to support a conviction of larceny. *Regina* v. *Starr*, 40 Q. B. 268.

220.—A conviction for stealing wood under 32-33 Vict. c. 21, s. 25, was also bad, for not alleging that the property taken was of the value of twenty-five cents at the least; the direction in the conviction, that the defendant should pay seventy-five cents for said wood, not being a finding that it was of that value. *Regina* v. *Caswell*, *ante*, No. 209.

221.—The prisoner, being the agent of the American Express Company, in the State of Illinois, received a sum of money which had been collected by them for a customer, and put it into their safe, but made no entry in their books of its receipt, as it was his duty to do, and afterwards absconded with it to this province, where he was arrested,

Held, that he was guilty of larceny, and was properly convicted here under 32-33 Vict. c. 21, s. 112. *Regina* v. *Hennessy*, 35 Q. B. 603; R. S. c. 164, ss. 4, 88; c. 174, s. 22.

222.—Demanding with menaces money actually due, is not a demand with intent to steal, under 4-5 Vict. c. 25,

s. 11. *Regina* v. *Johnson*, 14 Q. B. 569 ; R. S. c. 173, s. 1. See *post* Nos. 301, 302.

223.—The Act 32-33 Vict. c. 21, s. 43, makes it a felony to send "any letter demanding of any person with menaces, and without any reasonable or probable cause," any money, etc.,

Held, that the words "without reasonable or probable cause," apply to the money demanded, and not to the accusation threatened to be made. *Regina* v. *Mason*, 24 C. P. 58 ; R. S. c. 173, s. 1. See *post* Nos. 301, 302.

See also Burglary, Embezzlement, False Pretences, Frauds, *ante*, Threats *post*.

27. Libel—

224.—On an indictment for libel the defendant cannot plead the truth of the libel. *Regina* v. *Dougall*, 18 L. C. J. 85, Q. B. 1874 ; R. S. c. 163, ss. 3, 4 ; c. 174, s. 148.

225.—Nor can the existence of rumors be proved in justification of the libel. *Ib.*

226.—To an indictment for libel, it is necessary to plead not only that the publication was true, but that it was made for the public good. *Regina* v. *Hickson*, 3 L. N. 139 ; *Regina* v. *Laurier*, 11 R. L. 184, Que. ; R. S. c. 163, s. 4.

227.—Where an indictment for libel contained a general allegation that the newspaper in which it appeared was circulated in the district of Montreal, the court refused to allow evidence of the publication of the

article in Montreal, or to allow an amendment of the indictment. *Regina* v. *Hickson*, 3 L. N. 139, 1880.

228.—A defendant committed for trial on a charge of libel, subsequently published other libellous matter concerning the prosecutor after the depositions had been put on file in the Supreme Court, and it would be the duty of the presiding judge thereof at the next sitting of the court to submit the matter to the grand jury. The libels were published on the 30th December, 1885, and the 20th January, 1886. A motion for attachment for contempt was not made until March 27th, 1886,

Held, that defendant had committed a punishable offence, as the proceedings were at the time so far pending in the court as to enable it to act summarily by attachment to punish, if necessary, the offence committed. The main object of the application being to punish for the libellous publications, not to punish for the past offence, it was held not to have been made too late. *Regina* v. *Woodworth*, 7 Can. Law Times, 246, N. S.

229.—Evidence that the defendant in a criminal prosecution is, at the time of the trial, editor and proprietor of a journal in which the libel was printed, is insufficient. The defendant should be proved to have been a proprietor or publisher at the date of publication. *Regina* v. *Sellars*, 6 L. N. 197, Que.

28. Murder—

230.—An indictment for manslaughter will not lie against the managing director of a railway company by reason of the omission to do something which the company

by its charter was not bound to do, although he had personally promised to do it. *Brydges exp.*, 18 L. C. J. 141, Q. B. 1874.

231.—As to murder committed in the United States by a slave to prevent capture. See *In re Anderson*, 20 Q. B. 124, *post* No. 678.

232.—Prisoner being indicted for the murder of one H., the principal witness for the crown stated that the crime was committed on the 1st of December, 1859, on a bridge over the river Don, and that the prisoner and one S. (who had been previously tried and acquitted) threw H. over the parapet of the bridge into the river. The counsel for the prisoner then proposed to prove by one D. that S. was at his place, fifty miles off, on that evening; but the learned judge rejected the evidence, saying that S. might be called, and if contradicted might be confirmed by other testimony. S. was called, and swore that he was not present at the time, but he not being contradicted, D. was not examined,

Held, that the presence of S. was a fact material to the enquiry, and that D. therefore should have been admitted when tendered; and the prisoner having been found guilty, a new trial was ordered. *Regina* v. *Brown*, 21 Q. B. 330.

233.—Death resulting from fear caused by menaces of personal violence and assault, though without battery, is sufficient in law to support a conviction of manslaughter. *Regina* v. *Dugal*, 4 Q. L. R. 350, 1878; R. S. c. 162, ss. 2, 5.

234.—On a trial for murder, the death of the deceased was shown to have been caused by his being stabbed by a

sharp instrument. It was proved that the prisoner struck the deceased, but neither a knife nor other instrument was seen in his hand. For the prisoner evidence was offered that on the day preceding the homicide the prisoner had a knife which could not have inflicted the wound of which deceased died; and that on that day the prisoner parted with it to a person who held it until after the crime was committed. The learned judge at the trial refused to admit the evidence,

Held, GALT, J., dissenting, that the evidence was properly rejected. *Regina* v. *Herod*, 29 C. P. 428.

235.—P. (the prisoner) and D. (deceased), being brothers, were in the house of the latter, both a little intoxicated. D. struck his wife, and on P. interfering, a scuffle began. While it was going on D. asked for the axe, and, when they let go, P. went out for it and gave it to him, asking what he wanted with it. D. raised it as if to strike P., and they again closed, when the wife hid the axe. While the scuffle was going on D. struck P. twice. On getting up, P. kicked him on the side and arm, and then ran across the garden, got over a brush fence into the road, and dared D. three times to come on, saying the last time that he would not go back the same way as he came. D. seized a stick from near the stove, which had been used to poke the fire with, and ran towards P. In trying to cross the fence he fell to his knees, and P. came forward and took the stick out of his hand. He got up, and as he went over the fence P. struck him on the head with it. The wife entreated him to spare her husband, but he struck him a second time, when he fell, and again, while on the ground, from which he never rose. P., in answer to the wife, said D. was not killed, and refused to take

him in, saying, "Let him lie there till he comes to himself,"

Held, that the evidence was sufficient to go to the jury to establish a charge of murder; that if the death had been caused by the kicks received before leaving the house, the circumstances would have repelled the conclusion of malice; but that whether what took place at the fence was during a continuance of the heat and passion created by the previous quarrel, was, under the circumstances, a question for the jury. A conviction for murder was therefore upheld, and a new trial refused. *Regina* v. *McDowell*, 25 Q. B. 108.

236.—The prisoner was indicted for manslaughter. The evidence established that one T., an habitual drunkard, went to an hotel in Quebec, where he met the prisoner and some of his companions. T. put himself in the way to be offered drink, which the prisoner ordered for him and paid for. Prisoner then gave him three other glasses of liquor (proved to be three-quarters whiskey reduced and one quarter wine), which deceased drank in rapid succession. Insisting on the prisoner's capacity to drink, prisoner offered to make bets that deceased could drink, and even offered him a share of one of the bets. In this way deceased was induced to drink two very large tumblers full of a mixture of beer, whiskey and wine. Shortly after the deceased was overcome by the drink, became unconscious, and was carried home in a cab, and died next morning, without ever having recovered speech or consciousness. In charging the jury, the court said that drinking with another, or even giving another drink, was in itself innocent, and if the person to whom the drink was given died of the effects of it, the party giving it was not responsible. But if the jury were

satisfied that the drink was given not out of good fellowship, but with the intention of making the deceased ill or drunk, it was an illegal act, and if the man died of the effects of the drink so given, it would be manslaughter in the party giving it. Prisoner was acquitted. *Regina* v. *Lortie*, 9 Q. L. R. 352, Q. B., Que.

237.—If a person gives another drink, with the intention to do him bodily injury, and he dies, it will be manslaughter; and if the intention be to kill him, it will be murder. *The Queen* v. *Boutet*. Charge to the jury, Oct., 1883. Ramsay, Ap. Cases, 196.

238.—An indictment contained two counts, one charging the prisoner with murdering M. J. T. on the 10th November, 1881; the other with manslaughter of the said M. J. T. on the said day. The grand jury found "a true bill." A motion to quash the indictment for misjoinder was refused, the counsel for the prosecution electing to proceed on the first count only,

Held, affirming the judgment of the Supreme Court of New Brunswick, that the indictment was sufficient.

The prisoner was convicted of manslaughter in killing his wife, who died on the 10th November, 1881. The immediate cause of her death was acute inflammation of the liver, which the medical testimony proved might be occasioned by a blow or a fall against a hard substance. About three weeks before her death (17th October preceding), the prisoner had knocked his wife down with a bottle; she fell against a door, and remained on the floor for some time; she was confined to her bed soon afterwards, and never recovered. Evidence was given of frequent acts of violence com-

mitted by the prisoner upon his wife within a year of her death, by knocking her down and kicking her in the side.

The following questions were reserved, viz., whether the evidence of assaults and violence committed by the prisoner upon the deceased, prior to the 10th November or the 17th October, 1881, was properly received, and whether there was any evidence to leave to the jury to sustain the charge in the first count of the indictment?

Held, affirming the judgment of the Supreme Court of New Brunswick, that the evidence was properly received, and that there was evidence to submit to the jury that the disease that caused her death was produced by the injuries inflicted by the prisoner. *Theal* v. *The Queen*, 7 S. C. R. 397, N. B.

239.—On a trial for intent to commit murder, a reserved case was brought before the Queen's Bench in Error and Appeal, on a motion in arrest of judgment which impugned the indictment upon which the defendant had been convicted on the ground that the words "of malice aforethought" had been omitted from the averment therein of the intent to murder, and the word feloniously had been written felonious,

Held, on the latter point, that the statute empowered the court to adjudicate, not on what merely appeared on the face of the case reserved, but on what had been therein expressly reserved for their consideration, and the court was therefore unable to look at it; but with regard to the first point, the omission of the words "of malice aforethought" was a substantial defect in the indictment such as could not be cured by amendment or covered by the verdict,

and judgment therefore should be arrested. *Regina* v. *Carr*, 26 L. C. J. 61, Que.; R. S. c. 174, Sched. No. 2.

See Assault, Nos. 42, 43, 44; Wounding, No. 326.

29. Mutiny—

240.—The Naval Discipline Act 29-30 Vict. c. 109, s. 25, authorizes a summary conviction before magistrates for this offence, but the 101st section expressly preserves the power of any court of ordinary civil or criminal jurisdiction with respect to any offence mentioned in the Act punishable by common or statute law,

Held, therefore, that defendant could be indicted under the C. S. U. C. c. 100, s. 2. *Regina* v. *Patterson*, 27 Q. B. 142,

Held, by J. Wilson, J., that the punishment imposed by the provincial Act stands abolished as long as the Mutiny Act is in force, and that the imprisonment can in no case exceed six calendar months; but that the power of trial by the Court of Oyer and Terminer, under the provincial Act, has not been taken away by the Mutiny Act, and therefore that the defendant in this case could not complain, as he had been tried by a tribunal of this kind, and sentenced to no longer imprisonment than the last-mentioned period; and that though a fine of 10s. had also been imposed, for this was merely nominal, in compliance with the provincial statute, and would not entitle him to be discharged, as the court had power to pass the proper judgment if an improper one had been given. *Ib.*

30. Neutrality Law—

241.—Lawful acts of war against a belligerent cannot be either commenced or concluded in neutral territory. *In re Burley*, 1 L. J. N. S. 34.

31. Nuisance—

242.—Mooring a raft in the Ottawa River so as to prevent the complainant and the public generally from navigating it, constitutes a public nuisance punishable as a misdemeanor. *Regina* v. *Kerr*, 3 L. N. 121; R. S. c. 174, s. 140.

243.—Where the defendant was convicted by a jury of keeping in a building an excessive and dangerous quantity of gunpowder, the court adjudged that he should pay a fine of £50, and be imprisoned till the fine was paid, and further ordered the sheriff forthwith to abate the nuisance by the immediate destruction of the gunpowder. *Regina* v. *Dunlop*, 11 L. C. J. 186, Q. B.

244.—But a writ of error was afterwards allowed to the defendant on the ground that, whereas the nuisance was susceptible of being abated by removal of the powder, there was no need to order its destruction, and the sheriff ought not to have been ordered to do more than abate the nuisance. *Ib.*

245.—The defendant was convicted of a nuisance in carrying on a manufactory of animal manure in the city, and on motion to set aside the verdict,

Held, that evidence to prove the advantage accruing or likely to accrue to the public at large from the sale and use of a manufactured article could not be admitted, inasmuch as it was settled that an allegation to the effect that the thing complained of furnished a greater convenience to the public than it took away, was no answer to an indictment for nuisance. *Regina* v. *Bruce*, 10 L. C. R. 117, Q. B. 1860.

246.—And *held*, also, that the rule *sic utere tuo ut alienum non loedas* is a familiar maxim of the common law of England, as well as of the civil law. *Ib.*

247.—An indictment alleged a nuisance to be near lot 16, and the evidence showed it to be on it,

Held, a fatal variance. *Regina* v. *Meyers*, 3 C. P. 305.

248.—The defendant, agent of the Bell Telephone Company of Canada, was indicted for illegally erecting three telegraph poles in Buade street, a leading thoroughfare in the city of Quebec, thereby obstructing the Queen's highway, to the common nuisance of the public. The company was incorporated by Act of the Parliament of Canada 43 Vict. c. 67, with power to establish telephone lines in the several provinces of the Dominion, and to construct, erect and maintain lines along any highway, street, bridge, watercourse, or any other such place, or across or under any navigable waters, either wholly in Canada, or dividing Canada from any other country, "provided that in cities, towns, and incorporated villages the opening up of the street for the erection of poles, or for carrying the wires underground shall be done under the direction and supervision of the engineer, or such other officer as the council may appoint, and in such manner as the council may direct, and that the surface of the street shall in all cases be restored to its former condition by and at the expense of the company." This charter and the consent of the council duly obtained were relied on by the defendant as a plea to the indictment. The jury, under the direction of the court, found a verdict of guilty, subject to the question reserved for the determination of the court *in banco* whether the said company had

authority under their statute, or were otherwise authorized by law to place the said poles in the said street. *Regina* v. *Maher*, 7 Q. L. R. 183, and 5 L. N. 43, Q. B. 1881. Conviction maintained in appeal; 1 Q. B. R. 384.

249.—On an indictment for nuisance in obstructing a highway, judgment had been arrested and a second trial had, in order to take the opinion of the jury on a particular question which the court thought material. The jury upon the second trial found a general verdict of acquittal, without answering the question which was submitted to them by the judge. The indictment had not been removed by *certiorari*, and

Held, therefore, that this court could not interfere by staying the entry of judgment until a new indictment could be preferred.

Semble, that the jury had a right to find generally as they did. *Regina* v. *Spence*, 12 Q. B. 519.

250.—Upon an application for a rule to tax the costs of proceedings on an indictment for nuisance in obstructing a highway, under 5-6 Will. and Mary, c. 33, and that they should be allowed to a particular person, the court refused the rule. A side bar rule is granted in England to tax these costs as a matter of course, but this application went further. *Regina* v. *Gordon* and *Regina* v. *Robson*, 8 C. P. 58.

32. Perjury.

251.—The swearing falsely by a voter, at an election of aldermen or common councilmen for the city of Toronto, that he is the person described in the list of voters entitled to vote, is not perjury by any express enactment; and a plea of justification to a declaration

on the case for imputing perjury to plaintiff, on the ground of such false swearing, is bad on demurrer. *Thomas* v. *Platt*, 1 Q. B. 217; R. S. c. 154, ss. 1, 2.

252.—The practice of indicting parties or witnesses for alleged perjury in a civil suit, while proceedings are still pending, disapproved of. *Chadd* v. *Meagher*, 24 C. P. 54.

253.—The court will not quash the indictment because there is a variance in the specific charge of perjury contained in the information and that in the indictment, provided the indictment sets forth the substantial charge contained in the information. *Regina* v. *Broad*, 14 C. P. 168; R. S. c. 174, Sched. No. 2.

254.—The prisoner being indicted for perjury in giving evidence upon a charge of felony against one E. G., it appeared that the felony was committed in the county of Middlesex, if at all. The justices before whom the examination took place entertained the charge and examined the witnesses within the city of London. Defendant's counsel objected at the trial that the justices, being justices of the county of Middlesex, had no jurisdiction, sitting in London, to examine into an offence committed outside the city limits,

Held, that the conviction was illegal. *Regina* v. *Rowe*, 14 C. P. 307; R. S. c. 174, s. 16.

255.—Upon an indictment for perjury committed upon the hearing of a complaint before a magistrate, the information having been proved,

Held, upon a case reserved, that it was unnecessary to prove any summons issued, or any step taken to

bring the person complained of before the magistrate; for so long as he was present, the manner of his getting there was immaterial. *Regina* v. *Mason*, 29 Q. B. 431.

256.—The indictment was defective for not showing the jurisdiction over the offence, by alleging where the liquor was sold, the sale of which without license was the complaint; but as judgment had been pronounced, this could be taken advantage of only by writ of error.

Quære, whether it was not defective also, for not showing that the person complained against was present, or that a summons issued, and that the magistrate was authorized to proceed *ex parte*. *Ib.*

257.—Attempting to bargain with or procure a woman falsely to make the affidavit provided for by C. S. U. C. c. 77, s. 6, that A. is the father of her illegitimate child, is an indictable offence. The attempt proved consisted of a letter written by defendant, dated at Bradford, in the county of Simcoe, purporting, but not proved, to bear the Bradford post-mark, and addressed to the woman at Toronto, where she received it,

Held, that the case could be tried at York.

Semble, *per* DRAPER, C.J., if the post mark had been proved, and the letter thus shown to have passed out of defendant's hands in Simcoe, intended for the woman, the offence would have been complete in that county, and the indictment only triable there.

Per HAGARTY, J., the defendant in that case would still have caused the letter to be received in York, and might be tried there.

Quære, whether, if the woman had committed the offence, it should have been charged as a misdemeanor

only, or as the statutory offence of perjury. *Regina* v. *Clement*, 26 Q. B. 297; R. S. c. 154, ss. 1, 2.

258.—C. S. U. C. c. 52, s. 73, empowers any justice of the peace to examine on oath any person who comes before him to give evidence touching loss by fire, in which a mutual insurance company is interested, and to administer to him the requisite oath. Upon an indictment for perjury, assigned upon an affidavit made in compliance with one of the conditions of a policy,

Held, that the policy must be produced, although the defendant's affidavit referred to the policy in such a way that its existence might be fairly inferred. *Regina* v. *Gagon*, 17 C. P. 530.

259.—32-33 Vict. c. 33, s. 8 (D), applies to all cases of perjury, and not merely to "Perjuries in Insurance Cases," which is the heading under which sections 1 to 12 are placed in the Act. *Regina* v. *Currie*, 31 Q. B. 582; R. S. c. 174, s. 16.

260.—Therefore, a magistrate in the county of Halton had jurisdiction to take an information, and to apprehend and bind over a person charged with perjury committed in the county of Wellington. *Ib.*

261.—A recognizance to appear for trial on such charge at the sessions was wrong, as that court has no jurisdiction in perjury, but a *certiorari* to remove it was refused, as the time for the appearance of the party had gone by. *Ib.*

262.—The fact that the stenographer who took a deposition in a civil case on which perjury is assigned has been sworn, must be proved by the record of proceedings in the case in which the deposition was taken.

A party summoned to appear in one division of the Superior Court at Montreal, to answer upon articulated facts, and who has appeared and been sworn in another division of the same court, where he has given his answers, may be convicted of perjury on the answers so given. *Regina* v. *Downie*, M. L. R. 3 Q. B. 360. Confirmed in Sup. Ct., 11 L. N. 315.

263.—The non-production by the prosecution on a trial for perjury of the plea which was filed in the civil suit wherein the defendant is alleged to have given false testimony, is not material where the assignment of perjury makes no reference to the pleadings; but the defendant, if he desire, may prove the contents of the unproduced pleading by secondary evidence. Neither is it essential to prove that the facts sworn to by the defendant as alleged in the indictment were material to the issues. *Regina* v. *Ross*, M. L. R. 1 Q. B. 227.

264.—To sustain a conviction for perjury in an affidavit, it is not necessary that the jurat should contain the place at which the affidavit is sworn, for the perjury is committed by the taking of the oath, and the jurat, so far as that is concerned, is not material. *Regina* v. *Currie*, 31 Q. B. 582.

265.—There was no statement in the affidavit as to where it had been made, either in the jurat or elsewhere, except the marginal venue, "Canada, County of Grey, to wit:" but the contents showed that it related to lands in that county, and it was proved that defendant subscribed the affidavit; that the party before whom it purported to have been sworn was a justice of the peace for that county, and had resided there for some years; that the affidavit had been received through the post-office, by the agent of the crown lands there,

by whom it was forwarded to the commissioner of crown lands: and that subsequently a patent issued to the party on whose behalf the affidavit had been made.

Held, evidence from which the jury might infer that the affidavit was sworn in the county of Grey. *Ib.*

266.—*Held*, also, that if the affidavit was sworn in the county of Grey, the proof of the swearing by the justice of the peace, and the taking of the oath by the defendant, were made out by proving their signatures. *Ib.* 270

267.—An election under the Municipal Act is commenced when the returning officer receives the nomination of candidates, and it is not necessary to constitute an election that a poll should be demanded. Where, therefore, in an indictment for perjury, defendant was alleged to have sworn that no notice of the disqualification of a candidate for township councillor had been given previous to or at the time of holding the election, the perjury assigned being that such notice had been given previous to the election; and the notice appeared to have been given on the nomination of the candidate objected to. 271 272 273

Held, that the assignment was not proved. *Regina* v. *Cowan*, 24 Q. B. 606.

268.—An indictment for perjury charged that it was committed on the trial of an indictment against A. B., at the Court of Quarter Sessions, for the county of B. on the 11th of June, 1867, on a charge of larceny,

Held, sufficient. *Regina* v. *Macdonald*, 17 C. P. 635. 274

269.—A joint affidavit made by the defendant and one D., stated * * * "Each for himself maketh oath

and saith that, etc.; and that he, this deponent, is not aware of any adverse claim to or occupation of said lot." The defendant having been convicted of perjury on this latter allegation,

Held, that there was neither ambiguity nor doubt in what each defendant said, but that each in substance stated that he was not aware of any adverse claim to or occupation of said lot. *Regina* v. *Atkinson*, 17 C. P. 295.

270.—Perjury cannot be assigned upon a deposition which has been irregularly taken, as where it was commenced before a judge who took notes, and was continued under a different system before the prothonotary only. *Regina* v. *Gibson*, 7 R. L. 574, 1876.

271.—Or where the enquête was taken without the necessary consent in writing of the parties. *Regina* v. *Martin*, 21 L. C. J. 156, 1877.

272.—Even where the parties waive such consent subsequently. *Regina* v. *Martin*, 7 R. L. 672, 1876.

273.—On a reserved case, it was held that though the stenographer's notes were not read to, or signed by the witness, the latter was properly convicted upon the testimony of that officer based upon his recollection of what he had heard the accused say, and this notwithstanding some slight irregularities at the trial. *Regina* v. *Leonard*, 3 L. N. 138, 211, 1880.

274.—An accusation of perjury cannot be based on a deposition irregularly taken.

The question whether the deposition was voluntary and corrupt should be left to the jury. *Regina* v. *Denault*, 8 L. N. 260, Que.

275.—An indictment which alleged that the accused had committed perjury in a cause "wherein one Adrien Girardin, trader, and Thomas Ling was defendant," was held to be defective because of the omission of the words "was plaintiff" after the word "trader," especially as the question on the answer to which perjury was assigned was "Did you not make a bargain with plaintiff;" and the negative averment alleged, "whereas in truth he had made a bargain with A. G." *Regina* v. *Ling*, 2 L. N. 410; 5 Q. L. R. 359.

276.—Where it was moved to amend an indictment for perjury so as to negative the truth of the answer given by the accused, the application was rejected. *Regina* v. *Leonard*, 3 L. N. 138, 1880; R. S. c. 174, s. 128.

277.—On a motion to quash an indictment for perjury, (1) because there were no words to show the jurisdiction of the court as in the Lynch case (22 J. 187, 7 R. L. 553), (2) that there were two distinct charges of perjury in the indictment, (3) that the word "knowingly" is omitted, (4) that it does not appear that the perjury was in any judicial proceeding,

Held, the venue is Montreal, and the perjury is alleged to have taken place there; therefore, Lynch's case does not apply. Including two charges of perjury in the same indictment would not be ground for quashing the indictment; but as a matter of fact the two false statements were in the same deposition, and under one oath; therefore, there were not two false oaths, but one. As regards the word "knowingly," the indictment follows the statutory form, and it is therefore declared by law to be sufficient. On the last ground the terms of the statute are sufficiently

followed. *The Queen* v. *Bain*, Ramsay, A. C., 191; R. S. c. 174, sched. 2.

278.—An indictment charging that defendant had sworn that "he had paid L. the sum of $4,200, which was the balance of the money coming to him out of the monies paid to him by Beemer for securing the contract for the water works of the City of Quebec," will not be supported by evidence that the defendant swore that "he had paid L. the sum of $4,200, which was the balance of the money coming to him out of the monies paid to him by Beemer for securing the contract for the water works of the City of Quebec *and by Elisée Beaudet on behalf of the Lake St. John Railway.*" *Regina* v. *Trudel*, 14 Q. L. R. 193.

279.—The general verdict on two counts for perjury was held bad by the full court, and a new trial ordered, where the assignment in the second count was defective in setting up part only of what defendant had said, and omitting a qualifying statement; and the evidence on the first count was so contradictory as to leave room for doubt whether the jury would have found a verdict of guilty had that count stood alone; and this, notwithstanding the fact that had the first count stood alone the verdict could not have been touched. *Regina* v. *Bain*, 23 L. C. J. 327, 1877.

280.—Parties separately indicted for perjury, alleged to have been committed at one and the same hearing, can be witnesses for each other. *Regina* v. *Atkinson*, 17 C. P. 295.

281.—Where it appears on the face of the indictment that the statement complained of was made before a justice of the peace in preferring a charge of laceny committed

within his jurisdiction, it is unnecessary to allege expressly that he had authority to administer the oath. *Regina* v. *Callaghan*, 19 Q. B. 364.

See *Regina* v. *Murphy*, 9 L. N. 95.

33. Personation—

282.—Falsely personating a voter at a municipal election is not an indictable offence. Remarks as to the form of indictment in such a case. *Regina* v. *Hogg*, 25 Q. B. 66.

34. Property, Injuries to—

283.—The Act does not apply where the defendant cut firewood on a lot occupied as a squatter, and improved by his brother, with the latter's permission. There could be no malice against the prosecutor, the actual owner. The conviction was quashed on appeal. *Dumais* v. *Hall*, 13 Q. L. R. 236, Que.; R. S. c. 168, s. 59.

284.—On the 8th November, 1875, an information was laid against B. before the police magistrate of St. Thomas, by one N., under the 32-33 Vict. c. 22, for having unlawfully and maliciously broken and injured a fence round the land of N. The defence set up was, that the fence encroached upon B.'s land; but there was evidence which, if believed, went to show that B. did not commit the injury under a *bona fide* exercise or belief of a right; and the magistrate convicted and fined him. B. appealed to the general sessions of the peace, where neither side asked for a jury; the court urged them to have one, but the respondent, N., refused; and the court having heard the evidence, decided that B. acted, though mistakenly, under a *bona fide* belief that he had a right to remove the fence,

and without malice; and they ordered the conviction to be quashed with costs. N. then appealed to quash the order, upon the ground, amongst others, that the case could not be tried without a jury: but

Held, that the 32-33 Vict. c. 31, s. 66, which authorizes the court to try without a jury, is within the powers of the Dominion Parliament, and that the case having been properly before the sessions, this court could not review their decision upon the merits. Section 66 of the 32-33 Vict. c. 22, does not dispense with proof of malice in such cases, but, read in connection with section 29, merely means that the malice need not be conceived against the owner of the property injured. *Regina* v. *Bradshaw*, 38 Q. B. 564; R. S. c. 168, ss. 27, 60.

285.—The omission of the words "so that the same be injured or destroyed," or words equivalent, in an indictment, under 32-33 Vict. c. 22, s. 11, is fatal, and is not cured by verdict. *Regina* v. *Bleau*, 7 R. L. 571, 1876; *Regina* v. *Faure*, *Regina* v. *Berthé*, 3 L. N. 266; R. S. c. 168, s. 12.

35. Rape—

286—Having connection with a woman under circumstances which induce her to believe that it is her husband, does not amount to a rape. *Regina* v. *Francis*, 13 Q. B. 116; R. S. c. 162, s. 37.

287.—In the case of rape of an idiot or lunatic, the mere proof of connection will not warrant the case being left to the jury. There must be some evidence that it was without her consent, *e.g.*, that she was incapable, from imbecility, of expressing assent or dissent; and if she

consent from mere animal passion, it is not rape. *Regina* v. *Connolly*, 26 Q. B. 317 ; R. S. 157, s. 3.

288.—In this case the charge was assault with intent to ravish. The woman was insane, and there was no evidence of her general character of chastity, or anything to raise a presumption that she would not consent. The jury were directed that if she had no moral perception of right and wrong, and her acts were not controlled by the will, she was not capable of giving consent, and the yielding on her part, the prisoner knowing her state, was not an act done with her will. They convicted, saying she was insane and consented,

Held, that the conviction could not be sustained. *Ib.*

289.—On an indictment for attempting to have connection with a girl under ten, consent is immaterial, but in such a case there can be no conviction for assault if there was consent. *Ib.* R. S. c. 162, s. 38.

290.—The meaning of the words that the prisoner "violently and against her will feloniously did ravish," is, that the woman has been quite overcome by force or terror, accompanied with as much resistance on her part as was possible under the circumstances, and so as to have made the ravisher see and know that she really was resisting to the utmost, and in this case the evidence was

Held, sufficient to warrant a conviction. The facts as they appeared in evidence, were left to the jury, who were also told that they must be satisfied before convicting that the prisoner had had connection with the prosecutrix, "with force and violence, and against her will;" and further, that "some resistance should be

made on the part of the woman, to show that she really was not a consenting party,"

Held, a proper and full direction. *Regina* v. *Fick*, 16 C. P. 379.

291.—Prisoner was indicted under 32-33 Vict. c. 20, s. 53, for an attempt to commit rape upon a child between ten and twelve years of age. On the part of the defence it was attempted to prove that the girl had had connection with other young persons, and that she had consented to the alleged acts of the prisoner,

Held, that the consent of the child was immaterial, and therefore that evidence of such consent would be rejected. *Regina* v. *Paquet*, 9 Q. L. R. 351; R. S. c. 162, s. 41.

292.—The prosecutrix, on an indictment for rape, was asked in cross-examination, after she had declared she had not previously had connection with a man other than the prisoner, whether she remembered having been in the milk house of G., with two persons named M., one after the other,

Held, that the witness might have objected, or the judge might, in his discretion, have told the witness she was or was not bound to answer the question; but the court ought not to have refused to allow the question to be put because the counsel for the prosecution objected to it. *Regina* v. *Laliberté*, 1 S. C. R. 117, 1877.

293.—In the same case, a witness was called for the defence, and asked, "Did you ever see M., the prosecutrix, with D. M. and P. M. (the persons before alluded to), and if so, please state on what occasion,

and what were they doing?" The court refused to allow the question. *Ib.*

294.—Where the prisoner, being tried for the crime of rape, was found guilty of an attempt to commit rape, and a motion was made to have the verdict set aside and a new trial granted, on the ground principally that the evidence, if proof at all, was proof of a different crime from that of which the defendant was found guilty, and that he would therefore be still liable to be tried,

Held, on a reserved case, that the prisoner having been tried and convicted of an attempt to commit the felony, he could not be tried for any other offence on the facts upon which the verdict was given, and the motion was dismissed. *Regina* v. *Webster*, 9 L. C. R. 196, Q. B.; R. S. c. 174, s. 185.

36. Rescue

295.—One W. was brought before magistrates in the custody of defendant, a constable, to answer a charge of misdemeanor, and after witnesses had been examined, he was verbally remanded until the next day. Being then brought up again, and the examination concluded, the justices decided to take bail and send the case to the assizes. He said he could get bail if he had time to send for them, and the justices verbally remanded him till the following day, telling defendant to bring him up then to be committed or bailed. On that day defendant negligently permitted him to escape, for which he was convicted,

Held, that W. was in custody under the original warrant, and the matter still pending before the magistrates, until finally disposed of by commitment

to custody or discharge on bail; and that the conviction was proper. *Regina* v. *Shuttleworth*, 22 Q. B. 372; R. S. c. 155.

37. Riot—

296.—Defendant was indicted for a riot and assault, and the jury found him guilty of a riot, but not of the assault charged,

Held, that a conviction for riot could not be sustained, the assault, the object of the riotous assembly, not having been executed, although the defendant might have been guilty of riot or joining in an unlawful assembly. *Regina* v. *Kelly*, 6 C. P. 372; R. S. c. 147.

297.—A procession having been attacked by rioters, the prisoner, one of the processionists, and in no way connected with the rioters, was proved, during the course of the attack, to have fired off a pistol on two occasions —first in the air, then at the rioters. So far as appeared from the evidence, the prisoner acted alone and not in connection with any one else,

Held, that a conviction for riot could not be sustained. The prisoner having been indicted jointly with a number of the rioters, on a charge of riot, and convicted; upon a case reserved after verdict, the conviction was quashed. *Regina* v. *Corcoran*, 26 C. P. 134; R. S. c. 147.

298.—Counts for riot and unlawful assembly, under the Rev. Stat., N. B. t. 39, c. 147 (Con. Stat., p. 1,084), which are misdemeanors, may be joined in an indictment with a count for assault. *Regina* v. *Long*, 7 Can. Law Times, 250, N. B.

38. Smuggling—

299.—Although it is provided by 31 Vict. c. 6, s. 80, that persons unlawfully removing goods from a bonded warehouse should incur the penalties provided against smuggling, and by section 75 of the same statute smuggling is made a misdemeanor, punishable by a penalty not exceeding two hundred dollars, or imprisonment for a term not exceeding one year, or by both, still an indictment will not lie, under section 80, for a misdemeanor, committed under section 75. *Regina* v. *Bathgate, et al.*, 13 L. C. J. 299, Q. B. 1869.

39. Stellionatus—

300.—The defendant was convicted before the Queen's Bench of having sold a certain immovable property as free and unencumbered, well knowing that he had previously granted a hypothec on such property to the complainant, and that such hypothec was registered,

Held, on a reserved case by the full bench, that the penalties mentioned in the statute under which the conviction was had were cumulative, and the prisoner was sentenced accordingly. *Regina* v. *Palliser*, 4 L. C. J. 277; R. S. c. 164, s. 94.

40. Threats—

301.—In order to constitute the crime of sending threatening letters, it is necessary that the letter contain an express or implied demand, that it be sent to the person threatened or to some other person with the intention that it reach such threatened party, that the threats be of a nature to intimidate a person of ordinary force of character, and that the demand be made without

reasonable or probable cause. *Regina* v. *Tranchant*, 9 L. N. 333; R. S. c. 173, s. 1.

302.—It is necessary that the money be demanded with threats and with intent to steal it. A creditor who by means of threatening letters obtains the payment of his claim is guilty of no crime. *Regina* v. *Piché*, 9 L. N. 380; R. S. c. 173, s. 1. See Nos. 222, 223 *ante*.

41. Vagrancy—

303.—The Vagrant Act, declares certain persons or classes of persons to be vagrants, amongst others, "all common prostitutes or night-walkers wandering in the fields, public streets, or highways, lanes, or places of public meeting, or gathering of people, not giving a satisfactory account of themselves, all keepers of bawdy houses and houses of ill-fame, or houses for the resort of prostitutes, and persons in the habit of frequenting such houses, not giving a satisfactory account of themselves;" and "shall upon conviction be deemed guilty of a misdemeanour, and punishable, etc.,"

Held, that the Act does not, on its true construction, declare that being a prostitute, etc., makes such persons liable to punishment as such; but only those who when found at the place mentioned, under circumstances suggesting impropriety of purpose, on request or demand are unable to give a satisfactory account of themselves. On the conviction of the prisoner herein she was committed to custody under a warrant issued by the convicting magistrate. She gave bail and was discharged from custody under 33 Vict. c. 27, s. 1. On the appeal being heard, the prisoner was found guilty, and the conviction affirmed, and the

prisoner directed to be punished according to the conviction. No process was issued by the sessions for enforcing the judgment of the court, but a new warrant was issued by the convicting magistrate under which the prisoner was retaken. Writs of *habeas corpus* and *certiorari* were issued, and on the return thereof a motion was made for the discharge of the prisoner. In the margin of the writ of *habeas corpus*, it was marked "per" 33 Car. 2, which was signed by the judge issuing it,

Held, that the prisoner was not in custody or confined under the judgment of the sessions, but under the warrant of the convicting magistrate; and,

Semble, under the circumstances, the convicting magistrate was *functus officio*, and therefore could not issue the warrant in question, which should have been issued by the sessions; and possibly they could have directed punishment for the unexpired term; but that if no bail had been given, and the prisoner had remained in custody, no further order of commitment would have been necessary, or if no warrant of commitment had been issued prior to appeal, the magistrate could have issued one thereafter,

Held, also, there was power to act under R. S. O. c. 70, and so a judge in chambers could deal with the motion: that marking the writ as under the statute of Charles, did not prevent the learned judge so acting under chapter 70, or at common law; and as no offence was declared the prisoner was directed to be discharged on the *habeas corpus*,

Held, also, that under a *certiorari* the conviction might be quashed; and as the judgment of the sessions confirmed the conviction, it would probably fall with

it. *Regina* v. *Arscott*, 9 Ont. Rep. 541, Q. B.; R. S. c. 157, s. 8.

304.—The defendant was summarily convicted under 32-33 Vict. c. 28, s. 1, as a "person who, having no peaceable profession or calling to maintain himself by, but who does, for the most part, support himself by crime, and then was a vagrant," etc., etc.

The evidence showed that the defendant did not support himself by any peaceable profession or calling, and that he consorted with thieves and reputed thieves; but the witnesses did not positively say that he supported himself by crime,

Held, that it was not to be inferred that the defendant supported himself by crime; that to sustain the conviction there should have been statements that witnesses believed he got his living by thieving, or by aiding and acting with thieves, or by such other acts and means as showed he was pursuing crime. *Regina* v. *Organ*, 11 P. R. 497; 6 Can. Law Times, 593, Ont.; R. S. c. 157, s. 8.

305.—The defendant registered his name and address at the American Hotel, Toronto, and on the same day was arrested at the Union Railway Station, having been pointed out to the police by some of the railways' officials as a suspicious character. On his person were found two cheques, one for $700 the other for $900, which were sworn to be such as are used by "confidence men," and a mileage ticket nearly used up in favor of another person, and $8 in cash. He offered no explanation of the cheques or the ticket, and gave no information about himself,

Held, that the Vagrant Act did not warrant his arrest, much less his conviction.

Before a person can be convicted of being a vagrant of the first class named in the Act ("all idle persons who not having visible means of maintaining themselves, live without employment") he must have acquired in some degree a character which brings him within it as an idle person, who has no visible means of maintaining himself, *i.e.*, not "paying his way or being apparently able to obtain employment, yet lives without employment. *Regina* v. *Basset*, 10 P. R. 386; R. S. c. 157, s. 8.

306.—The defendant was convicted of having unlawfully caused a disturbance on a public street by being drunk, was a vagrant, and thus loose, idle, and disorderly person within the meaning of the Act. The evidence disclosed that he was drunk and that he had impeded and incommoded peaceable passengers, but it negatived his causing a disturbance by being drunk. Conviction quashed. *Regina* v. *Daley*, 8 Can. Law Times, 100, Ont.; R. S. c. 157, s. 8. (*f*)

307.—An allegation that the accused was drunk in a public street without adding that he then caused a disturbance by being drunk, is insufficient. *Exp. Despatie*, 9 L. N. 387, Que.; R. S. c. 157, s. 8.

308.—A conviction under 32-33 Vict. c. 32, s. 2, s-s 6, for being an unlawful (instead of an habitual) frequenter of a house of ill-fame, and which adjudged the payment of costs, which is unauthorized by the statute, must be quashed.

That section makes the being such habitual frequenter a substantial offence, punishable as in section 17, and does not merely create a procedure for trial and punishment. *Regina* v. *Clark*, 2 Ont. Rep. 523, Q. B.

309.—On an application to the divisional court to quash a conviction made by the police magistrate of the city of Toronto, against the defendant for keeping a house of ill-fame, there being evidence, upon which the magistrate could convict, the court refused to interfere.

In the conviction the offence was stated to be against the statute in such case made and provided,

Held, that if not constituted an offence under 32-33 Vict. c. 32, the reference to the statute might be treated as surplusage, and the conviction sustained under the common law; but that the reference to the statute might be supported, because the 17th section imposes a punishment in some respects different from the common law. *Regina* v. *Flint*, 4 Ont. Rep. 214, Q. B.; R. S. c. 157, s. 8.

310.—A conviction under 32-33 Vict. c. 28, for that V. L. was in the night time of the 24th February, 1870, a common prostitute, wandering in the public streets of the City of Ottawa, and not giving a satisfactory account of herself, contrary to the statute,

Held, bad, for not showing sufficiently that she was asked, before or at the time of being taken, to give an account of herself, and did not do so satisfactorily. *Regina* v. *Lerecque*, 30 Q. R. 509.

311.—*Semble*, proceedings having been taken under 29-30 Vict. c. 45, that the evidence might be looked at; and if so, it was plainly insufficient in not showing that the place in which she was found was within the statute, or that she was a common prostitute. *Ib.* R. S. c. 157, s. 8.

312.—The defendant was convicted under the proceedings taken under 32-33 Vict. c. 32, (D), not 32-33 Vict.

c. 28, (D), for keeping a house of ill-fame. The conviction merely "ordered" but did not "adjudge" any imprisonment or any forfeiture of the fine imposed,

Held, bad, as substituting the personal order of the magistrate for a condemnation or adjudication. The conviction and warrant of commitment ordered the defendant to be imprisoned for six months, and to pay within the said period to the said magistrate the sum of $100 without costs, to be applied according to law, and in default of payment before the termination of said period, further imprisonment for six months,

Held, bad, for uncertainty in requiring the fine to be paid to the magistrate personally instead of to the gaoler. *Regina* v. *Newton*, 11 P. R. 98; R. S. c. 157, s. 8; c. 176, s. 3.

313.—A conviction in this case for keeping a disorderly house, and house of ill-fame, was held bad for awarding, after the adjudication of a penalty by fine and imprisonment, further imprisonment in default of sufficient distress, or of non-payment of fine; and,

Held, also, that this was not a mere formal defect within section 30 of 32-33 Vic. c. 32 (D).

Held, also, that the effect of section 28 was not to take away the writ of *certiorari*. *Regina* v. *Richardson*, 11 P. R. 95.; R. S. c. 176, ss. 24, 22.

See Exposure, Nos. 115, 116, *ante*.

42. War, Levying—

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314.—The prisoner was convicted upon an indictment under C. S. U. C. c. 98, containing three counts, each charging him as a citizen of the United States. The first count alleged that he entered Upper Canada with

intent to levy war against Her Majesty; the second that he was in arms within Upper Canada, with the same intent; the third, that he committed an act of hostility therein, by assaulting certain of Her Majesty's subjects, with the same intent. The prisoner's own statement, on which the crown rested, was that he was born in Ireland, and was a citizen of the United States. It was objected that the duty of allegiance attaching from his birth continued, and he therefore was not shown to be a citizen of the United States, but

Held, that though his duty as a subject remained, he might become liable as a citizen of the United States by being naturalized, of which his own declaration was evidence,

Held, also, upon the testimony set out in the case, that there was evidence against the prisoner of the acts charged,

Held, that even if he carried no arms, on which the evidence was not uniform, yet being joined with and part of an armed body which had entered Upper Canada from the United States, and attacked the Canadian volunteers, he would be guilty of their acts of hostility and of their intent; and that if he was there, to sanction with his presence as a clergyman, what the rest were doing, he was in arms as much as those who were actually armed. *Regina* v. *McMahon*, 26 Q. B. 195.; R. S. c. 146, s. 6.

315.—In this case, the charge being the same as in the last, it was shown that the prisoner had declared himself to be an American citizen since his arrest, but a witness was called on his behalf who proved that he was born within the Queen's allegiance,

Held, that the crown might waive the right of allegiance, and try him as an American citizen, which he claimed to be. The fact of the invaders coming from the United States would be *prima facie* evidence of their being citizens or subjects thereof. The prisoner asserted that he came over with the invaders as reporter only, but

Held, that this clearly could form no defence, for the presence of any one encouraging the unlawful design in any character, would make him a sharer in the guilt. *Regina* v. *Lynch*, 26 Q. B. 208 ; R. S. c. 146, s. 6.

316.—The prisoner being indicted under C. S. U. C. c. 98, and charged as a citizen of the United States was acquitted on proving himself to be a British subject. He was then indicted as a subject of Her Majesty, and pleaded *autrefois acquit*, 318.

Held, that the plea was not proved, for that by the statute the offence in the case of a foreigner and of a subject is substantially different, the evidence, irrespective of national status, which would convict a foreigner, being insufficient as against a subject; and the prisoner, therefore, was not in legal peril on the first indictment. *Regina* v. *Magrath*, 26 Q. B. 385 ; R. S. c. 146, s. 7.

317.—The prisoner, having been indicted under C. S. U. C. c. 98, (3 Vict. c. 12,) as a citizen of the United States, was convicted of having as such joined himself to divers other evil disposed persons, and having been unlawfully and feloniously in arms against the Queen within Upper Canada, with intent to levy war against Her Majesty. It was sworn that the prisoner had said he was an American citizen, and had been in the 319.

American army, and there was no evidence offered to contradict this,

Held, evidence against the prisoner, as his own admissions and declarations of the country to which he belonged,

Held, also, that the evidence, set out in the report, was sufficient to prove the offence charged. The Imperial statute 11-12 Vict. c. 12, does not over-ride 3 Vict. c. 12, of this Province, for the latter is re-enacted by the consolidation of the statutes, which took place in 1859. *Regina* v. *Slavin*, 17 C. P. 205; R. S. c. 146, s. 6.

17. Wife, Neglecting to Support—

318.—On a trial for neglecting to provide for wife,

Held, that the words in section 25, 32-33 Vict. c. 20, "so that the life of such apprentice or servant is endangered, or the health of such apprentice or servant has been or is likely to be permanently injured" must be read as applying to the "wife, child, ward, lunatic or idiot," mentioned in the first part of the section, notwithstanding that in the repetition of the enumeration "apprentice or servant" are alone mentioned, and an indictment which omits such allegation is bad and will be quashed. *Regina* v. *Maher*, 7 L. N. 82, Que.; R. S. c. 162, s. 19.

And in such cases the wife is a competent witness for the crown. *Ib.* R. S. c. 174, s. 216; c. 162, s. 19.

319.—In an indictment under 32-33 Vict. c. 20, s. 25, it is not necessary to allege that by the refusal and neglect of the defendant to supply necessary food, etc., to his wife, her life had been endangered, or her health

permanently injured; nor is it necessary to make proof to that effect. *Regina* v. *Scott*, 7 L. N. 322; 28 L. C. J. 264, Que.; R. S. c. 162, s. 19.

320.—The indictment need not allege that accused has the means and is able to provide food and clothing, nor that the neglect endangers the life or affects the health of the wife. *Regina* v. *Smith*, 2 L. N. 217, 1879.

321.—An indictment under 32-33 Vict. c. 20, s. 25, alleged that S. was the wife of defendant, and was willing to live with him as such; that it was defendant's duty to provide the necessary food, clothing, and lodging for her sustenance; and that he, on, etc., and from thence hitherto, unlawfully, wilfully, and without lawful excuse, did refuse and neglect to provide the same, contrary to the statute, etc.,

Held, that the allegation that she was ready and willing to live with defendant was surplusage, and need not be proved; but that it must be shewn that she was in need, and that defendant had the ability to supply her wants; and as this did not sufficiently appear by the evidence a conviction was set aside. *Regina* v. *Nasmith*, 42 Q. B. 242.

322.—*Held*, ARMOUR, J., dissenting, that the evidence of a wife is inadmissible, on the prosecution of her husband for refusal to support her, under 32-33 Vict. c. 20, s. 25.

Under Consol. Stat. U. C. c. 112, any question of law which may have arisen on the criminal trial, may be reserved for the consideration of the justices of either of Her Majesty's superior courts of common law.

Quære, *per* ARMOUR, J., having regard to the provisions of the Judicature Act, whether a reservation to

the Justices of the Queen's Bench Division of the High Court of Justice was authorized. *Regina* v. *Bissell*, 1 Ont. Rep. 514 Q. B.; R. S. c. 162, s. 19; c. 174, s. 216.

323.—Under 32-33 Vict. c. 20, s. 25, as amended by 49 Vict. c. 51, s. 1, defendant was charged by his wife, before a magistrate, with refusing to provide necessary clothing and lodging for herself and children. At the close of the case for the prosecution, defendant was tendered as a witness on his own behalf. The magistrate refused to hear his evidence, not because he was the defendant, but because he did not wish to hear evidence for the defence; and subsequently without further evidence committed him for trial,

Held, that the defendant's evidence should have been taken for the defence; that a magistrate is bound to accept such evidence in cases of this kind and give it such weight as he thinks proper, and that the exercise of this discretion to the contrary is open to review,

Held, also, that the amended section of the Act is intended to enlarge the powers and duties of magistrates in cases of this nature, and that the word "prosecution" therein includes the proceedings before magistrates as well as before a higher court. *Regina* v. *Meyer*, 11 P. R. 447; 7 Can. Law Times, 16; R. S. c. 162, s. 19.

18. Wounding—

324.—Where the prisoner was indicted for feloniously and unlawfully wounding H. B., with intent, thereby then feloniously, wilfully, and of his malice aforethought to kill and murder the said H. B.; and by a second count with feloniously and unlawfully wounding the said H. B. with intent thereby then to commit murder,

Held, that the offence charged in the second count was described in the words of the statute, 32-33 Vict. c. 20, s. 10, by which the offence of wounding with intent to commit murder, was made different in nature from what it was under the common law, and as the prisoner had taken no objection to it until after verdict, that the motion in arrest of judgment could not be maintained. *Regina* v. *Deery*, 26 L. C. J. 129; R. S. c. 162, s. 8. 327

325.—Where the words "feloniously and of his malice aforethought" were omitted in the averment of the intent in an indictment for wounding with intent to murder, it was held upon a reserved case that the count was insufficient. *Regina* v. *Bulmer*, 5 L. N. 287, Que.; R. S. c. 162, s. 8. 328 329.

326.—On a reserved case,

Held, that in an indictment for wounding with intent to murder, the offence must be charged to have been committed by the prisoner wilfully, maliciously, and of his malice aforethought, and judgment would be arrested, the indictment being defective in this respect. *Kerr* v. *Regina*, 2 R. C. 238, Q. B., 1872; R. S. c. 162, s. 8. 330

See Murder, *ante* No. 230, Assault, No. 38.

V.—INDICTMENT.

327.—The court has the right to refer a bill back to the grand jury, after a return of no bill has been found. *Regina* v. *Meyers*, 2. L. N. 378, 1879.

328.—The omission of the word "together" from an indictment against two persons for robbery, of whom only one is present, is immaterial. *Regina* v. *Provost*, M. L. R. 1 Q. B. 477.

329.—In an indictment purporting to be under 32-33 Vict. c. 22, s. 45, (D), for malicious injury to property, the word "feloniously" was omitted;

Held, bad, and ordered to be quashed. *Regina* v. *Gough*, 3 Ont. Rep. 402, Q. B.

330.—The defendant was indicted under section 25, 32-33 Vict. c. 20, for that she on the 5th day of January, 1879, then being the mistress of a certain girl called Marie, her servant, her maiden name being unknown, of the age of eight years, did unlawfully and maliciously do grievous bodily harm to the said Marie, whereby the health of the said Marie was permanently injured. At the trial it was proved that the child's name was Marie Vincent, and that she was not the servant of the defendant. In face of this evidence, the offence, as laid, could not be proved, and motion to amend being made, the learned chief justice ordered the indictment to be amended by striking out the words "then being mistress of" and "her servant, her maiden name

being unknown," and by adding after the name "Marie" the name of Vincent in the three places where the name "Marie" occurs. The trial proceeded on the indictment so amended, and the prisoner was found guilty of a common assault. The prisoner was sentenced to three months' imprisonment, but in passing sentence the chief justice reserved two questions: first, whether the amendment was justifiable; second, whether the verdict for assault ought to be maintained. The court held the conviction to be right. *The Queen* v. *Bissonnette*, 2 L. N. 212, 23 L. C. J. 249, Ramsay, A.C., 190; R. S. c. 174, s. 191; c. 162, s. 19.

331.—Everything that is necessary to constitute the offence must be alleged in the indictment.

332.—The indictment charged that the defendant "did receive, conceal, or assist" one W., a deserter from the navy.

Semble, not sufficiently certain and precise. *Regina* v. *Patterson*, 27 Q. B. 142.

333.—Where the motion was made to quash an indictment after proof, on the ground of the omission of certain words therein,

Held, that the motion was too late, as such a motion should have been made before proceeding to proof. *Regina* v. *Bourdon & McCully*, 2 R. L. 713, Q. B., 1867; R. S. c. 174, s. 143.

334.—The court will not arrest judgment after verdict, or reverse judgment in error, for any defect patent on the face of the indictment, as objection to such defect must be taken by demurrer or by motion to quash the indict-

ment. *Regina* v. *Mason*, 22 C. P. 246; R. S. c. 147, s. 143.

See No. 357, *post*.

335.—A defective indictment may be quashed on motion, as well as on demurrer. *Regina* v. *Bathgate*, 13 L. C. J. 299, Q. B. 1869; R. S. c. 174, s. 143.

336.—As to the averment, "*contra formam statute*," see *Regina* v. *Deane*, 10 Q. B. 464; *Regina* v. *Walker*, 10 Q. B. 465; *Regina* v. *Cummings*, 16 Q. B. 15; *Regina* v. *Carson*, 309; 14 C. P. R. S. c. 174, s. 128.

337.—In an indictment for obstructing an officer of excise, under 27-28 Vict. c. 3,

Held, that the omission in the indictment of the averment that at the time of the obstruction the officer was acting in the discharge of his duty, under the authority of the above-mentioned statute, was not a defect of substance, but a formal error, which was cured by the verdict. *Spelman* v. *Regina*, 13 L. C. J. 154; R. S. c. 174. s. 2.5.

338.—An indictment for perjury, based on oath alleged to have been made before the "judge of the general sessions of the peace in and for the said district," instead of before the judge of the sessions of the peace in and for the City of Montreal, may be amended after plea. *Regina* v. *Pelletier*, 15 L. C. J. 146; R. S. c. 174, s. 143.

339.—The fact that the word *cashier* had been inserted in brackets after the word clerk in an indictment for embezzlement as a clerk, did not vitiate the proceedings. *Regina* v. *Paquet*, 2 L. N. 140.

340.—An indictment in a criminal prosecution is not admissible as evidence in a civil action against the defendant. *Winning, et al.* v. *Fraser*, 12 L. C. J. 291.

See No. 350 *post*.

341.—Where in an indictment under 31 Vict. c. 8, s. 143, for having opened the lock of a warehouse, used for the security of the revenue, without the knowledge and consent of the collector of inland revenue, a redundant statement was introduced, making the words which form the gist of the offence, viz., without the knowledge and consent of the collector of inland revenue, to apply apparently not to the opening of the lock, but to the keeping and securing certain goods in the warehouse,

Held, that the indictment was bad. *Regina* v. *Spelman*, 13 L. C. J. 303, Q. B. 1869.

342.—An indictment having been held bad upon demurrer, the judgment was that the indictment be quashed, so that another indictment might be preferred, not that defendants be discharged. *Regina* v. *Tierney, et al.*, 29 Q. B. 181.

343.—The defendant was indicted in the district of Beauharnois for perjury committed in the district of Montreal, but there was no averment in the indictment that the defendant had been apprehended, or that he was in custody at the time of finding the indictment. The defendant neither demurred nor moved to quash, but after verdict moved in arrest of judgment on the ground that there was no averment of his having been apprehended or having been in custody as mentioned. The sitting judge dismissed the motion in arrest of judgment, but reserved the point raised,

Held, that the indictment was defective; that the defect was one which could not be amended, and, consequently, was not cured by verdict, and that the judgment should be arrested and the defendant discharged. *Regina* v. *Lynch*, 20 L. C. J. 187; 7 R. L. 553; R. S. c. 174, s. 140.

344.—The Attorney-General or the Solicitor-General may not delegate to counsel prosecuting for the crown the authority vested in him under this section. *Regina* v. *Abrahams*, 6 S. C. R. 10; 4 L. N. 90; 24 L. C. J. 335; 1 Q. B. R. 126; and *Regina Paulet*, 9 R. L. 449; *Regina* v. *Ford*, 14 Q. L. R. 231; R. S. c. 174, s. 140.

345.—It is not necessary that a bill submitted to a grand jury be signed by the clerk of the crown, the signature of the attorney prosecuting for the crown being sufficient. *Regina* v. *Ouellette*, 7 R. L. 222, 1875. *Regina* v. *Reginer*, Ramsay's A. C. *Regina* v. *Grant*, 2 L. C. L. J. 276.

346.—An indictment signed by an advocate, prosecuting for the crown as representing the Attorney-General of the province of Quebec, and not the Minister of Justice of the Dominion is valid. *Regina* v. *Downey*, 13 L. C. J. 193, Q. B. 1868.

347.—Upon an amendment of the indictment at the trial, no postponement will be granted, if the prisoner be not prejudiced in his defence. *Regina* v. *Senecal*, 8 L. C. J. 287, Q. B. 1862; R. S. c. 174, s. 141.

348.—An application to postpone a trial in consequence of the absence of witnesses must be supported by special affidavit, showing the witnesses in question are material. *Regina* v. *Dougall, et al.*, 18 L. C. J. 85, Q. B. 1874; R. S. c. 174 s. 141.

349.—Where the defendant, after having been tried on a charge of obtaining money under false pretences and acquitted, moved for copies of indictment and papers, the motion was rejected. *Regina* v. *Senecal*, 8 L. C. J. 286, Q. B. 1862.

350.—The production of the original indictment is insufficient to prove an indictment for felony; but a record must be made up with a proper caption. *Henry* v. *Little*, 11 Q. B. 296.

See No. 340, *ante*.

351.—Variance between indictment and proof in description of land. *Regina* v. *Baby*, 12 Q. B. 346.

352.—On an indictment for not keeping a bridge in repair,

Held, no objection that the proceedings on the record were in the Court of Queen's Bench for the Province of Ontario, there being no such province when they were had, for the mention of the province was surplusage; nor that there were no second *placita* or continuance on the record, for, if necessary, an amendment would be allowed. *Regina* v. *the Desjardin Canal Co.*, Q. B. 374.

353.—A copy of an indictment for high treason may be had by the consent of the Attorney-General. *Rex* v. *McDonel*, Tay, 299.

354.—*Semble*, that a person tried for felony and acquitted can only obtain a copy of the indictment and record of acquittal, to be used in an action for malicious prosecution, on the fiat of the Attorney-General, and the granting or refusing such application cannot be reviewed by this court. The application here was for a rule calling on the Attorney-General to show cause

why judgment of acquittal should not be entered on the indictment.

Held, that the indictment not being a record of this court, or brought into it by *certiorari*, the court had no jurisdiction. *Regina* v. *Ivy*, 24 C. P. 78; R. S. c. 174, s. 181.

355.—An indictment charging a misdemeanour against a registrar and his deputy jointly is good if the facts establish a joint offence. A deputy is liable to be indicted while the principal legally holds the office, and even after the deputy himself has been dismissed. *Regina* v. *Benjamin*, 4 C. P. 179.

356.—The indictment charged one B. with obtaining by false pretences, from one J. T., two horses with intent to defraud, and that the defendant was present aiding and abetting the said B. the misdemeanor aforesaid to commit,

Held, good, defendant being charged as a principal in the second degree. *Regina* v. *Connor*, 14 C. P. 529.

357.—The court can entertain an application to quash an indictment at any time. An indictment within R. S. C. c. 174, s. 140, need not follow the exact language of the information. That section does not prevent the finding of any indictment founded upon the facts disclosed in the depositions. *Regina* v. *Howes*, 8 Can. Law Times 417, Man.; R. S. c. 174, s. 143.

358.—It is not a misjoinder of counts to add allegations of a previous conviction for misdemeanour as counts to a count for larceny; and the question, at all events, can only be raised by demurrer or motion to quash the indictment, under 32-33 Vict. c. 29, s. 32; and where

there has been a demurrer to such allegations as are insufficient in law, and judgment in favour of the prisoner, but he is convicted on the felony count, the court of error will not re-open the matter on the suggestion that there is misjoinder of counts. *Regina* v. *Mason*, 22 C. P. 246.

359.—The prisoner was indicted on two sets of counts, one charging him as a citizen of the United States, the other as a subject of Her Majesty. The learned judge at the trial refused to put the crown to an election between the two sets of counts, and the court upheld his ruling. *Regina* v. *School*, 26 Q. B. 212.

360.—Counts for different misdemeanors of the same class may be joined in the same indictment. *Regina* v. *Abrahams*, 24 L. C. J. 325; 1 Q. B. R. 126, 1880.

361.—Although it is not generally allowable to include under different counts of one indictment two different felonies, yet the same offence may be charged in different ways in different counts. Thus, in one count, the charge may be of having stolen wood belonging to A., and in another count, of having stolen wood belonging to B. *Regina* v. *Falkner*, 7 R. L. 544, 1876.

362.—An indictment against a deputy-returning officer at an election, for refusing, on the requisition of the agent of one of the candidates, to administer the oath to certain parties tendering themselves as voters, was

Held, bad on demurrer, for omitting the name of the agent. *Regina* v. *Bennett*, 21 C. P. 235.

363.—Where an indictment for appropriating certain property of a bank, to wit, "75 shares of the stock of the Montreal Telegraph Company," was objected to

on the ground that it did not allege the stock to be that of an incorporated company, the words "a body corporate" were ordered to be added. *Regina* v. *Paquet*, 2 L. N. 140, 1879; R. S. c. 174, s. 143.

364.—A count in an indictment may be struck out, but an allegation cannot be amended. *Regina* v. *Leonard*, 3 L. N. 138, 1880; R. S. c. 174, s. 143.

VI.—JURY.

365.—By 32-33 Vict. c. 29, s. 44, every person qualified and summoned to serve as a juror in criminal cases according to the law in any province, is declared to be qualified to serve in such province, whether such laws were passed before the British North America Act or after it, subject to and in so far as such laws are not inconsistent with any Act of the Parliament of Canada.

By 42 Vict. c. 14 (O), and 44 Vict. c. 6 (O), the mode of selecting jurors in all cases, formerly regulated by 26 Vict. c. 44, was changed. The jury was selected according to the Ontario statutes, and the prisoner challenged the array, to which the crown demurred, and judgment was given for the crown. The prisoner was found guilty and sentenced, and he then brought error,

Held, per HAGARTY, C.J., that the Dominion Statute was not *ultra vires* by reason of its adopting and applying the laws of Ontario as to jurors to criminal procedure.

Semble, that under section 139 Con. Stat. U. C. c. 31, where no indifference or fraudulent dealing of the sheriff is shown, any irregularities are not assignable for error.

Per ARMOUR and CAMERON, JJ.—The objection raised by the prisoner was not a good ground of challenge to the array.

Quære, whether when such a question has been reserved by a judge at the trial, it can afterwards be made the subject of a writ of error. *Regina* v. *O'Rourke*, 1 Ont. Rep. 464; 18 L. J. N. S. 239; R. S. c. 174, s. 160.

366.—The statute 32-33 Vict. c. 29, s. 44, is not *ultra vires*. The word *together* is not essential in an indictment against two persons for robbery to show that the offence was joint. *Regina* v. *Provost*, 8 L. N. 395; M. L. R. 1 Q. B. 477; R. S. c. 174, s. 160.

367.—It was objected, on error, to the record of judgment on a conviction for murder, that the only authority shown being that of oyer and terminer, the award "therefore let a jury thereupon immediately come," was unauthorized, and a special award of *venire facias* was requisite; but

Held, assuming, but not admitting, that in England there is a difference in this respect between the power of justices of oyer and terminer and of gaol delivery, and that the record showed no authority to deliver the gaol, that in this country, by the Jury Act,

C. S. U. C. c. 31, both have the same powers, the general precept to summon a jury being issued by both before the assizes. *Whelan* v. *Regina*, 28 Q. B. 2.

368.—By proclamation published on the 15th December, 1866, the county of Peel was separated from York from and after the 1st of January, 1867. On the 23rd of November preceding, the usual precept had been sent to the sheriff of the united counties for the winter assizes for York, to be held on the 10th January, 1867, and the sheriff returned his panel to that precept, containing fifty-four jurors from York and thirty from Peel. Only those from York, however, attended, and the prisoner was tried by a jury *de medietate*, including six of these jurors, upon an indictment found and pleaded to at the previous assizes in October. On motion for a new trial, or *venire de novo*, because the precept and panel should have been for York only, not for the united counties,

Held, *per* DRAPER, C.J., that the objection, if available at all, must be taken by writ of error.

Per HAGARTY, J., no objection would lie. *Regina* v. *Kennedy*, 26 Q. B. 326.

369.—As to the trial of an indictment for fraudulent disposition of goods under the insolvent law, whether by common or special jury, see *Regina* v. *Kerr, et al.*, 26 C. P. 214, Ont.

370.—The accused is not entitled to have communication of the list of jurors before they are called. In trials by a mixed jury, the jurors should be called alternatively from the list of English names and the list of French names. The accused is entitled to a jury *de*

medietate linguæ in cases of misdemeanor. *Regina* v. *Maguire*, 13 Q. L. R. 96, 99, Que.; R. S. c. 174, s. 166.

371.—Where the prisoner was indicted on a charge of uttering forged paper,

Held, that it was not competent for the court to order the trial by jury of a preliminary question, raised by prisoner's counsel, to the effect that the prisoner had been extradited from the United States on a charge of forgery. *Regina* v. *Paxton*, 10 L. C. J. 212, Q. B. 1866.

372.—On a trial for misdemeanor the crown has the same right of ordering a juror to stand aside, without showing cause, until the panel is exhausted, as in a felony. *Regina* v. *Hogan*, 1 L. C. L. J. 70; *Regina* v. *Benjamin*, 4 C. P. 179; R. S. c. 174, s. 164.

373.—On a case reserved,

Held, that even before the first of January, 1870, when the provisions of 32-33 Vict. c. 29, came into force, the crown, on a trial for misdemeanor, might, without showing cause, order jurors to stand aside until the panel had been gone through. *Regina* v. *Fraser*, 14 L. C. J. 245, Q. B. 1870; R. S. c. 174, s. 164.

374.—And on a trial for felony the crown may, without showing cause, direct a juror, on his name being called, to stand aside, and on the panel being read over a second time, may, without showing cause for challenge, direct the same juror to stand aside the second time, and so on until the panel is exhausted, that is, until it appears that a jury cannot be got without such juror. *Regina* v. *Lacombe*, 13 L. C. J. 259, Q. B.; R. S. c. 174, s. 164.

375.—And when to obtain six jurors speaking the language of the defence, all speaking that language have been called, the crown is still at liberty to challenge by "stand aside," and is not bound to show cause until all the panel is exhausted. *Ib.*, and 18 L. C. J. 242; R. S. c. 174, s. 164.

376.—Upon an indictment for conspiracy to procure by fraud the return of one F. as a member for the legislative assembly,

Held, that the crown was entitled to challenge any of the jurors peremptorily, without assigning a cause, until the panel had been exhausted. *Regina* v. *Fellowes*, 19 Q. B. 48; R. S. c. 174, s. 164.

377.—The 37 Vict. c. 38, s. 11, enacts that the right of the crown to cause jurors to stand aside shall not be exercised "on a trial of any indictment or information by a private prosecutor for the publication of a defamatory libel,"

Held, to include all cases of defamatory libels upon individuals, as distinguished from seditious or blasphemous libels; and that the fact of the prosecution being conducted by a counsel appointed by and representing the attorney-general would make no difference. *Regina* v. *Patteson*, 36 Q. B. 127; R. S. c. 174, s. 165.

The judge, at the trial, allowed the crown counsel in such a case to direct jurors to stand aside, but, after the verdict, entertaining doubts, he reserved a case for the opinion of the court as to the propriety of his having permitted it,

Held, that he was clearly precluded from such reservation by having allowed the right when claimed, and that such question was a question of law which

arose on the trial, within the meaning of the statute. *Ib.* R. S. c. 174, ss. 259, 266.

378.—The prisoner should challenge before the juror takes the book in his hand; but the judge, in his discretion, may allow the challenge made afterwards, before the oath is fully administered. *Regina* v. *Kerr*, 3 L. N. 299, 1880.

379.—After some jurors had been peremptorily challenged by the prisoner, and others directed by the crown to stand aside, and when only one had been sworn, one M. was called and challenged by the prisoner for cause. At the suggestion of the court, and with consent of counsel, M. was directed to stand aside by the crown "till it was ascertained whether a jury could be empannelled without him, on the understanding that if it appeared necessary or expedient the challenge for cause should be tried in the usual way." After the prisoner had made nineteen peremptory challenges, a juryman was called whom the prisoner desired to challenge peremptorily. The counsel for the crown then asked that the question of M.'s competency should be tried in the usual way. The prisoner's counsel objected, but the judge ruled with the crown, and he certified that he so ruled because it was in accordance with the arrangement under which the juror was directed to stand aside; that no exception was taken to this ruling; that he was not asked to note any objection to the mode of empannelling the jury; and that he was first asked to reserve the question after the assize had finished, when upon consent of counsel for the crown it was added to the other questions reserved,

Held, that the jury were properly empannelled. *Regina* v. *Smith*, 38 Q. B. 218.

380.—Upon a trial for murder, after the usual notice of right of challenge, two jurymen were sworn without challenge. J. H. was then called, and a person came forward and was sworn. Others were called, and challenged; and after another was called and sworn without challenge, the prisoner's counsel objected to J. H., as he was a witness in the case. Upon inquiry he was found not to be the person intended to be called on the jury, being not only a witness, but not a resident in the counties, and therefore not qualified as a juryman. Upon consent of counsel for the crown and prisoner, he was allowed to retire, and others were called and sworn, the prisoner exercising the right to challenge till the jury was chosen. After conviction, upon motion for a new trial,

Held, 1st, that J. H. (improperly sworn) was legally discharged from the jury; 2nd, that the right of challenge as to those previously sworn was not thereby re-opened, their re-swearing not being rendered necessary; 3rd, that the prisoner was properly tried by the twelve, although thirteen were sworn to try him. *Regina* v. *Coulter*, 10 C. P. 299.

381.—On a trial for murder the prisoner desired to challenge one S., one of the jurors called, for favour, alleging sufficient cause. The judge ruled that he must first exhaust his peremptory challenges, and this point was raised by plea and demurrer, and formally decided. The entry on the record then was that, in deference to the judgment, the challenge was taken and treated by the prisoner and by the attorney-general, as a peremptory challenge for and on behalf of the prisoner. Afterwards, having exhausted his twenty challenges, including S., he claimed to challenge peremptorily one H., contending that by the erroneous ruling he had

been compelled to challenge S. peremptorily, and should not be obliged to count him as one of the twenty. This was also entered of record, and decided against him,

Held, 1st, that the prisoner was entitled to challenge for cause before exhausting his peremptory challenges; that error would lie for the refusal of this right; and that had S. been sworn there must have been a *venire de novo*; but,

Held, also, 2nd, MORRISON, J., dissenting, that by the peremptory challenge of S., which excluded him from the jury, the first ground of error was removed; and that error on the second challenge could not be supported, for the prisoner had in fact had twenty peremptory challenges, and the peremptory challenge of S., being in deference to the ruling of the judge, did not make it the less a peremptory challenge. *Whelan* v. *Regina*, 28 Q. B. 2. Affirmed in appeal, 28 Q. B. 108.

382—In a case of felony in which one half of the jury, on the application of the prisoner, were sworn as being skilled in the French language, and it was discovered after verdict that one of such French half was not so skilled in the French language,

Held, that the trial and verdict were null and void, and must be set aside. *Regina* v. *Chamaillard*, 18 L. C. J. 149, Q. B. 1873.

383.—And where the defendant has asked for a jury composed of persons one-half speaking the language of the defence, six jurors speaking that language may first be put into the box, before calling any jurors of the other language. *Regina* v. *Dougall, et al.*, 18 L. C. J. 85, Q. B. 1874.

384.—Where Robert Grant was called from the panel as one of the jury, and after conviction, but before the jury left the box, it was discovered that Robert Crane had, by mistake, answered to the name of Grant, and had served in his stead on the jury, the court held that there had been a mistrial. *Regina* v. *Feore*, 3 Q. L. R. 219, 1877. *Regina* v. *Brisebois*, 9 Can. Law Times 14.

385.—Where, after the retirement of the jury, new evidence was discovered which, if true, would establish the innocence of the prisoner, it was held that the jury could not be recalled for the purpose of hearing the new evidence, and that the only remedy was to discharge the jury at the instance of the crown, with the consent of the prisoner. *Regina* v. *Wyllie*, 3 L. N. 139, 1880.

386.—The jury cannot be allowed to separate during the progress of a trial for felony, and where such separation takes place, it is a mistrial, and the court may order the party found guilty to be tried again as if no trial had been had. *Regina* v. *Derrick*, 2 L. N. 214; 23 L. C. J. 239; R. S. c. 174, s. 169.

387.—The jury have a right, at the conclusion of the case, to recall any of the witnesses whose evidence was not wholly understood by them. *Regina* v. *Lanière*, 8 L. C. J. 281, Q. B. 1857.

388.—*Held*, that a statement made by the jury, previous to the giving of the verdict, that a newspaper had been handed to them, cannot be recorded on the register of the court. *Regina* v. *Notman*, 4 L. C. L. J. 41, Q. B. 1868.

VII.—TRIAL.

389.—Where on an indictment for manslaughter the grand jury had found "no bill,"

Held, that the crown had the right to have the prisoner arraigned and tried on the finding of the coroner's jury. *Regina* v. *Tremblay*, 18 L. C. J. 158, Q. B. 1873; R. S. c. 174, s. 2 *c*.

390.—A coroner's jury found the cause of a death into which they were inquiring, to have been disease, adding that it was accelerated by an overdose of certain drugs taken in excess, and improperly compounded, prescribed and administered by one F., as a cholera preventative; and that F. was deserving of severe censure for the gross carelessness displayed by him in such compounding and prescribing. This inquisition having been brought up by *certiorari*, granted on the application of F., the court refused to quash it, holding that the imputation which it contained, not amounting to any indictable offence, gave him no right to have it quashed, and that under the circumstances, public justice did not require their interference.

Quære, whether the affidavits were properly entitled, *The Queen* (plaintiff) v. *Robert Farley* (defendant). *Regina* v. *Farley*, 24 Q. B. 384.

391.—The prisoner, charged with murder committed in the Kootenay district, was brought for trial in a court of oyer and terminer held at Kamloops, under the Assize Court Act, 1875, by one of the Supreme Court judges of British Columbia, who was also named in the commission of oyer and terminer issued by the Lieutenant-

392.

Governor. The prisoner pleaded to the jurisdiction, stating that the scene of the homicide was in Kootenay district; that no order changing the venue had been made under 32-33 Vict. c. 29, s. 11, (Rev. Stat. c. 174, s. 102); that, in the absence of such order, he could not be tried elsewhere than in Kootenay, and by a jury of the *visne;* and that the court professing to sit under a commission of the Lieutenant-Governor was improperly constituted.

By WALKEM, J., that as British Columbia had never at any time been divided into districts for purposes relative to the administration of justice in criminal cases, the province was but one venue; that the Lieutenant-Governor is authorized, under the British North America Act, s. 129, to issue commissions of oyer and terminer; that even if the commission were invalid a court of oyer and terminer presided over by a judge of the Supreme Court, would be under the combined effect of the Judicature Act, 1879, and the Assize Court Act, 1885, properly construed.

Held, in error, that the province had been divided into districts by the Sheriffs' Acts of 1873 and amendments; and that the prisoner had been improperly arraigned at Kamloops. *Regina* v. *Mallott*, 7 Can. Law Times, 97, B.C.

392.—The attempt to procure a woman to make a false affidavit consisted of a letter written by defendant, dated at Bradford, in the county of Simcoe, purporting, but not proved, to bear the Bradford post mark, and addressed to the woman at Toronto, where she received it,

Held, that the case could be tried at York.

Semble, per DRAPER, C.J., if the post mark had been proved, and the letter thus shown to have passed out of

defendant's hands in Simcoe, intended for the woman, the offence would have been completed in that county, and the indictment only triable there.

Per HAGARTY, J., the defendant in that case would still have caused the letter to be received in York, and might be tried there. *Regina* v. *Clement*, 16 Q. B. 297.

393.—The prisoner, at Seaforth, in the county of Huron, falsely represented to the agent of a sewing machine company that he owned a lot of land, and thus induced the agent to sell machines to him, which were sent to Toronto, in the county of York, and delivered to him at Seaforth,

Held, that the offence was completed in Huron, and could not be tried in York. *Regina* v. *Freithenheimer*, 26 C. P. 139, Ont.

394.—*Held*, that 32-33 Vict. c. 29, s. 11, does not authorize any order for the change of the place of trial of a prisoner in any case where such change would not have been granted under the former practice, the statute only affecting procedure. *Regina* v. *McLeod*, 5 P. R. 181.

395.—The prisoner, second mate of *The Star of England*, was tried before the Court of Queen's Bench, Quebec, on an indictment for manslaughter. He had grievously ill-treated on the high seas a seaman of the name of McK. so that he had to be put on shore at Kamouraska, where he died; his death, according to medical testimony, having been accelerated by the ill-treatment he had received. On a reserved case,

Held, that in order to prove that a steamer upon which a crime was committed was a British steamer,

it was not necessary to file the register of the steamer, and it is sufficient to establish that she sailed under the British flag. *Regina* v. *Moore*, 2 Q. B. R. 52, Q. B. 1881.

396.—But where a person dies in this province from ill-treatment received while on board of ship at sea, the trial for manslaughter of the author of such ill-treatment must take place in the district where death ensued, and not in the district where the accused was arrested. *Ib.*

397.—*Held*, that the great inland lakes of Canada are within the admiralty jurisdiction, and offences committed on them are as though committed on the high seas; and therefore any magistrate of this province has authority to enquire into offences committed on said lakes, although in American waters. *Regina* v. *Sharp*, 5 P. R. 135.

398.—The statute 32-33 Vict. c. 29, s. 11, enacts that "whenever it appears to the satisfaction of a judge that it is expedient to the ends of justice that the trial of any person charged with any felony or misdemeanor should be held in some place other than that in which the offence is supposed to have been committed, or would otherwise be triable, may order that the trial shall be proceeded with in some other district or place." The power is purely discretionary, and should be used with great caution; but where the application is made on the part of the accused, it will be sufficient to justify such discretion, that persons might be called on the jury whose opinions might be tainted with prejudice, and whom the prisoner could not challenge. *The Queen* v. *Russell*, Ramsay A. C. 199, 1878; R. S. c. 174, s. 102.

399.—The Court of Queen's Bench in appeal has no jurisdiction to order a change of venue. *Regina* v. *Corwin*, 24 L. C. J. 104; 2 L. N. 364, 1879.

400.—Affidavits used in applications on the crown side of the court must not be sworn before the prosecutor or his attorney. *Regina* v. *Marsh*. 7 Can. Law Times, 327, N. B.

401.—A motion to quash an indictment because the crown had refused to furnish the prisoner with the particulars of the false pretences was refused. *Regina* v. *Boucher* 10 R. L. 183, 1880.

402.—The prisoner had been tried on an indictment containing six counts charging him with shooting with intent to kill and murder, and had been found guilty on the first count; but the verdict was afterwards set aside owing to a defect in that particular count. It was

Held, that he could not be again tried on the same indictment, as all the counts referred to the same act of shooting. *Regina* v. *Bulmer*, 5 L. N. 92, 1881.

403.—On a writ of error, the record showed that the judge had discharged the jury after they had been sworn, in consequence of the suspicious disappearance of a witness for the crown, and the prisoner was remanded,

Held, that the judge had a discretionary power in the matter which a court of error would not review; that the discharge of the jury was not equivalent to an acquittal, and that the prisoner might be put on his trial again. *Regina* v. *Jones*, 3 L. N. 309, 1880.

404.—On an indictment for any offence after a prisoner's conviction, the defendant must first be arraigned and tried on the offence charged, and if found guilty, then

the jury are to be charged to try whether he has been so previously convicted or not. *Regina* v. *Harley*, 8 L. C. J. 208, Q. B. 1857.

405.—A prisoner will be allowed to withdraw his plea of "guilty," if it appear that he may have been under some misapprehension when he pleaded, and might therefore suffer injury. *Regina* v. *Huddell*, 20 L. C. J. 301, Q. B. 1876.

406.—Two parties accused of the same offence are not entitled to a separate defence. *Regina* v. *McConohy & Irwin*, 5 R. L. 746, Q. B. 1874.

407.—Persons on trial for felony may make full defence by two counsel and no more, and before a jury wholly composed of persons skilled in the language of the defence. *Regina* v. *Daoust*, 8 L. C. J. 85, Q. B. 1865.

408.—A party prosecuting under the 28th section of the Criminal Procedure Act of 1869 has no right to be represented by any other advocate than the representative of the Attorney-General. *Regina* v. *St. Amour*, 5 R. L. 469, Q. B. 1874; R. S. c. 174, s. 140.

409.—On the finding of an indictment for perjury, application was granted to attach the body of the defendant for default, when counsel appeared and asked to be allowed to plead "not guilty,"

Held, that the defendant must submit to the jurisdiction of the court before he can be allowed to take any proceedings therein. *Regina* v. *Maxwell*, 10 L. C. R. 45, Q. B. 1860.

410.—After the prisoner has been given in charge to the jury, the trial may be continued over to another day for cause deemed sufficient, such as the sudden illness of the counsel for the defence. *Regina* v. *Murphy*, 2 Q. L. R. 383, Q. B. 1875.

VIII.—EVIDENCE.

411.—Where an enquiry was held by the fire marshal, appointed under the statute of Quebec to hold such an investigation into the cause of the fire in the premises, and the accused, before any charge had been laid against him, made a deposition under oath before said fire marshal,

Held, that such deposition was properly admitted as evidence against him on his trial, except with regard to such questions as tended to criminate him, and to which he had objected. *Regina* v. *Coote*, 18 L. C. J. 103, P. C. 1873.

412.—The rule of law excluding the sworn statements of a prisoner under examination apply only to his examination on a charge against himself, and not when the charge was against another; for in the latter case, a prisoner is not obliged to say anything against himself, but if he volunteer such a statement, it will be admissible in evidence against him. Explanation of the principle on which the statement of a prisoner under oath is excluded. *Regina* v. *Field*, 16 C. P. 98.

413.—Remarks as to evidence of confessions, and an objection that the whole statement was not given. *Regina* v. *Jones*, 28 Q. B. 416.

414.—Statements made by a prisoner to the parties who arrested him, he having been previously told on what charge he was arrested, are evidence. *Regina* v. *Tufford*, 8 C. P. 81.

415.—Three indictments were found against the prisoner, lately assistant postmaster at Sweetsburg, and also a clerk in the store kept in the same premises by the postmaster. One charge was of having stolen a registered letter, containing money; another of having forged in the book of record a signature purporting to be that of the person to whom the letter was addressed; and the third for embezzlement. On his trial it was sought to prove that he acknowledged his guilt in a conversation with the postmaster and another. It appeared the conversation had begun about the embezzlement, and had continued to the subject of the theft and forgery. At the outset of the conversation, the witness admitted having, in effect, intimated to the prisoner that he had better confess,

Held, that evidence of the confession could not be received. *Regina* v. *Wyllie*, 3 L. N. 139, 1880.

416.—The prisoner was convicted of arson. His admission or confession was received in evidence on the testimony of the constable, who said that after the prisoner had been in a second time before the coroner, he stated that there was something more he could tell, whereupon the constable cautioned him not to say what was untrue. He then confessed the charge. The constable did not recollect any inducement being held out to him. There was also evidence that on the third day of his incarceration he expressed a wish to the coroner to confess, on which the latter gave him the ordinary caution, that anything he said might be used against him, and not to say anything unless he wished. He then made a second statement, and after an absence of a few minutes returned and made a full confession,

Held, that on these facts appearing, the statement

made to the constable was *primâ facie* receivable, and that the judge was well warranted in receiving as voluntary the confession made to the coroner after due warning by him. *Regina* v. *Finkle*, 15 C. P. 453.

417.—Upon a trial for murder it appeared that the deceased was found dead in his stable in the morning, killed by a gun-shot wound. The prisoner was a hired man in his house. His widow, the principal witness for the crown, testified that she and her husband went to bed by ten o'clock; that afterwards her husband, being aroused by a noise in the stable, got up and went out; that she heard the report of a gun; that a few minutes after the prisoner tapped at the door, which she opened; that he said he had done it, and it was well done; that she asked him if he had killed her husband, and he said he had, and that it was for her sake he had done it; that he told her to keep quiet, and give him time to get into bed, which she did; that she waited a few minutes and then gave the alarm, calling the prisoner and another man who was sleeping in the house, who went out together and discovered the body. She also swore that the prisoner had previously told her he was planning the murder, but that she did not then consider him in earnest. There was evidence, apart from her own, of her improper intimacy with the prisoner; and a true bill had been found against her for the murder. The jury were told that there was no direct evidence corroborating her testimony; the rule requiring the evidence of an accomplice to be confirmed was explained to them, and they were directed that before convicting they should be satisfied that the circumstantial evidence relied upon by the crown did corroborate her testimony. They convicted; and questions were reserved under Consolidated Statutes of

Upper Canada, chapter 112, whether the widow was an accomplice, and whether there was sufficient evidence to submit to the jury,

Held, that whether she was an accomplice or not, there was no ground for disturbing the verdict.

Quære, *per* HARRISON, C.J., whether the widow was an accessory after the fact, and whether, if so, she was such an accomplice as to require corroboration, according to the rule of practice.

Per MORRISON, J., and WILSON, J., she was an accessory after the fact. *Regina* v. *Smith*, 38 Q. B. 218.

418.—A conviction of a prisoner for horse-stealing, upon the uncorroborated evidence of an accomplice, was held legal, although the judge did not caution the jury as to the weight to be attached to the evidence. *Regina* v. *Beckwith*, 8 C. P. 274.

419.—*Semble*, that a conviction on an indictment for conspiracy to procure by fraud the return of one F. to the legislative assembly upon the evidence of an accomplice not corroborated by other testimony, is not illegal; but,

Held, that in this case such evidence was clearly confirmed, and that the verdict against all the defendants was warranted. *Regina* v. *Fellowes, et al.*, 19 C. P. 48.

420.—When the jury have been cautioned as to acting upon the unconfirmed testimony of accomplices, no fault can be found with the admission of their evidence. *Regina* v. *Seddons*, 16 C. P. 389.

421.—In this case, being an indictment for soliciting P. and L. to steal money of the Gore Bank, the jury were told that the testimony of the accomplices was not

sufficiently corroborated to warrant a conviction, whereupon they came into court stating that they thought the prisoner guilty, but that he ought not to be convicted on the evidence. They were then told that they ought to acquit; but after a short interval they returned a verdict of guilty. Before recording their finding, the presiding judge recommended them not to convict on the evidence, saying, however, that they could do so if they thought proper; they, nevertheless, adhered to their verdict,

Held, no ground for a new trial. *Ib.*

422.—The prisoner was indicted for unlawfully using an instrument on one J. L., with intent to procure her miscarriage. J. L. was called for the prosecution to prove the charge, and in cross-examination she stated that she had not told H. A., H. R., and M. T. that before the prisoner had operated on her she had been operated on for the purpose of procuring a miscarriage by Dr. B. H. A., H. R., and M. T. were called for the defence, and swore that J. L. had so stated to them. Dr. B. was then called by the crown, and he swore that he had not operated on J. L., as stated,

Held, that the evidence of Dr. B. was admissible,

Held, also, that the omission of the learned judge at the trial to tell the jury that the evidence of an accomplice ought to be corroborated does not entitle the prisoner to have the conviction reversed; and in this case there was no necessity for the caution, as there was abundance of corroborative evidence. *Regina* v. *Andrews*, 22 L. J. N. S. 287; 6 Can. Law Times, 395, Ont.

423.—*Semble*, that the more reasonable rule to adopt in such cases is, that, notwithstanding the caution

of the magistrate, it is necessary in the case of a second confession, not merely to caution the prisoner not to say anything to injure himself, but to inform him that the first statement cannot be used against him. But in this case, it having afterwards appeared that the prosecutor had offered direct inducements to the prisoner to confess,

Held, that if the judge was satisfied that the promise of favour thus held out had induced the confessions, and continued to act upon the prisoner's mind, notwithstanding the warning of the coroner, he was right in directing the jury to reject them. *Regina* v. *Finkle*, 15 C. P. 453.

424.—*Held*, also, that if the judge suspected the confessions had been obtained by undue influence, such suspicion should have been removed before he received the evidence. It is a question for the judge whether or not the prisoner has been induced by undue influence to confess. *Ib.*

425.—*Semble*, that when the names of other prisoners are mentioned in the confession, the proper course is to read the names in full, but to direct the jury not to pay any attention to them. *Ib.*

426.—The prisoner, after his committal for trial, and while in the custody of a constable, made a statement, upon which the latter took him before a magistrate, when he laid an information on oath charging another person with having suggested the crime, and asked him to join in it, which he accordingly did. Upon the arrest of the accused, the prisoner made a full deposition against him, at the time admitting his own guilt. Both information and deposition appear to have been voluntarily made, uninfluenced by either hope or

threat; but it also appeared that the prisoner had not been cautioned that his statements as to the other might be given in evidence against himself, though he had been duly cautioned when under examination in his own case,

Held, following *Regina* v. *Finkle*, 15 C. P. 453, that both the information and deposition were properly received in evidence, as being statements voluntarily made, uninfluenced by any promises held out as an inducement to the prisoner to make them, and that too, though made under oath. *Regina* v. *Field*, 16 C. P. 98.

427.—Upon a prosecution for uttering forged notes the deposition of one S. taken before the police magistrate on the preliminary investigation was read, upon the following proof that S. was absent from Canada; R. swore that S. had a few months before left R.'s house where she, (S.) had for a time lodged, that she had since twice heard from her in the U.S.A., but not for six months. The chief constable of Hamilton, where the prisoner was tried, proved ineffectual attempts to find S. by means of personal enquiries in some places, and correspondence with the police of other cities. S. had for some time lived with the prisoner as his wife,

Held, upon a case reserved, CAMERON, J., dissenting, that the admissibility of the deposition was in the discretion of the Judge at the trial, and that it could not be said that he had wrongly admitted it. *Regina* v. *Nelson*, 1 Ont. Rep. 500 Q. B.; R. S. c. 174, s. 222.

428.—*Held*, that absence was what it was necessary to establish, under 31-32 Vict., c. 30, s. 30, and that this could be proved by evidence that the parties were not

present, and could not be found at their domicil or usual places of abode. The testimony of the high constable, uncontradicted, established the absence, and the deposition of the absent witnesses might be read. *Regina* v. *Berian*, Ramsay A. C. 185; R. S. c. 174, s. 122.

429.—Affidavits taken before a magistrate at a preliminary investigation, but not in the presence of the accused, cannot be used as evidence before the grand jury, even when the affiants are absent. *Regina* v. *Carbray*, 13 Q. L. R., 100, Que.; R. S. c. 174, s. 222.

430.—The defendant on his trial upon an indictment cannot give evidence for himself, nor can his wife be admitted as a witness. *Regina* v. *Humphreys*, 9 Q. B. 337, ; R. S. c. 174, s. 217.

431.—On an indictment for assault and battery, occasioning actual bodily harm,

Held, that the defendant is not a competent witness on his own behalf under 43 Vict. c. 37. *Regina* v. *Richardson*, 46 Q. B.; 18 L. J. N. S. 10; R. S. c. 174, ss. 216, 217.

432.—The prisoner was indicted for an indecent assault. At the close of the case for the crown, the prisoner tendered himself as a witness in his own behalf. The judge at the trial ruled that as upon the evidence adduced an indecent assault had been proved, the prisoner could not be a witness, but reserved the point for the opinion of the Court of Queen's Bench, and that court affirmed the conviction. *Regina* v. *McDonald*, 30 C. P. 21, note; R. S. c. 174, s. 216.

433.—Where a prisoner was indicted under 32-33 Vict. c. 20, s. 47, for an assault occasioning actual bodily harm,

Held, that he could not be deemed to be on his trial on an indictment for a common assault, so as to entitle him to be admitted and give evidence as witness on his own behalf, under 41 Vict. c. 18, s. 1, (D); *Regina* v. *Bonter*, 30 C. P. 19; R. S. c. 174, s. 216.

434.—Two persons accused of the same offence, but in two separate indictments, are competent as witnesses in favor of the crown, and against one another, or the one for the other, and that even when a verdict has been rendered against them,—provided the sentence has not been pronounced against them. *Regina* v. *Tellier*, and *Regina* v. *Pelletier*, 1 R. L. 565, Q. B. 1870; R. S. c. 174, s. 214.

435.—And the value to be attached to their evidence in such cases is a matter for the decision of the jury. *Ib.*

436.—Four prisoners being tried together for robbery, one severed in his challenges from the other three, who were first tried,

Held, that he was a competent witness on their behalf. *Regina* v. *Jerrett, et al.*, 22 Q. B. 499; R. S. c. 174, s. 214.

437.—Where no evidence appears against one of several prisoners, he ought to be acquitted at the close of the prosecutor's case.

Quære, whether without such formal acquittal he may be called as a witness for his co-prisoners.

Semble, not unless it appeared that he has been joined in order to exclude his testimony. It is in the discretion of the judge at the close of the prosecution to submit such prisoner's case separately to the jury; but he is not bound to do so, and whether he has

rightly exercised his discretion or not, cannot be reserved as a point of law,

Held, that in this case (being an indictment for arson) it could not be said that there was no evidence against E. H., one of the prisoners; and,

Semble, that under the circumstances he could not be called as a witness for the others. *Regina* v. *Hambly, et al.*, 16 Q. B. 617; R. S. c. 174, s. 214.

438.—The private prosecutor upon the trial of an indictment for forcible entry and detainer cannot be examined as a witness for the prosecution, if the court may order restitution, but such private prosecutor may be examined, if since such forcible entry and detainer the possession of the property has been restored to him. *Regina* v. *Hughson, et al.*, 2 Rev. de Leg., 54, Q. S. 1847.

See Forcible Entry *ante*.

439.—The evidence required by the Consolidated Statutes of Canada, chapter 94, section 26, to corroborate the evidence of an interested witness, cannot be based upon something stated by such witness. *Regina* v. *Perry*, 1 L. C. L. J. 60, Q. B. 1865; R. S. c. 174, s. 218.

440.—Where illegal evidence has been allowed to go to the jury under reserve of objections, it may be subsequently ruled out by the judge in his charge, and the conviction is not invalidated thereby, if it do not appear that the jury were influenced by such illegal evidence. *Regina* v. *Fraser*, 14 L. C. J. 245, Q. B. 1870.

441.—The prisoner was indicted for forgery in feloniously uttering a cheque signed by H. J. & Co. on the Quebec Bank which he had altered from $400 to $1400. The evidence in support of the charge was that of J. who though a member of the firm when the cheque was

made had ceased to be such at the time of the trial, and who had been released by his partner from all liability and disclaimed any interest in the cheque. There was some evidence of the liabilities of the firm. to creditors at the time of J's. withdrawal,

Held, (Rose J., dissenting,) that J. was not a person interested or supposed to be interested, and that his evidence did not require corroboration. *Regina* v. *Hagerman*, 8 Can. Law Times 286, Ont; R. S. C. c. 174, s. 218.

442.—The prisoner was a trader in Toronto from whom one E. Fenwick purchased goods on credit in 1884 to the amount of $63. He discounted in the Central Bank a note for $136, dated August, 1887, purporting to be signed by E. Fenwick. This note was alleged to be a forgery, and at the trial E. F. denied making the note, and her son corroborated her denial, and swore it was not her signature, which he well knew. An agreement containing an authority to prisoner to sign notes with her name was believed to be genuine by the son, but the mother being recalled denied having signed the agreement. The court thought that as under the agreement prisoner had authority to sign E. F's name, and as her denial of its genuineness was not corroborated there was no case for the jury. *Regina* v. *Samo*, 8 Can. Law Times, 202, Ont.; R. S. c. 174, s. 218.

443.—On a trial for murder, where it was sought to make proof of the statements of the deceased,

Held, that in order to render the proof of a declaration admissible as a dying declaration, there must be positive proof that the person who made it was at the time under the impression of almost immediate dis-

solution, and entertained no hope of recovery. *Regina* v. *Peltier*, 4 L. C. R. 3, Q. B. 1853 ; R. S. c. 174, s. 220.

444.—Vague and general expressions, such as "I will die of it," "I will not recover," "it is all over with me," are insufficient to allow proof of them, as of the declaration of a dying person. *Ib.*

445.—The prisoners were charged with the murder of one B., caused by attempting, by the use of an instrument, to procure abortion. The deceased died on the 28th December, 1874. On the 24th she made a statement commencing: "I am very ill. I have no hope whatever of recovery. I expect to die." She then narrated the facts, and added: "If I die in this sickness I believe it will have been caused by the operations performed on me by Dr. Sparham, at the instigation of William Greaves. I make these statements in all truth, with the fear of God before my eyes, for I firmly believe that I am dying." On the 26th she was again examined, and the previous statement read to her. She confirmed its truth in every respect, and added that she then felt she was in the presence of God, and had no hope of recovery of any kind at the time; and her attention being called to the expression "If I die," she said, "I had no doubt whatever that I was dying and I felt that I was dying and did not by the form of the expression mean to doubt in any way that I was dying," etc.,

Held, that both statements were admissible; that the mere use of the words, "If I die" would not alone defeat the emphatic declaration of abandonment of all hope made on the same occasion; and that the second declaration was receivable in order to explain the first. *Regina* v. *Sparham and Greaves*, C. P., E. T. 1875; R. S. c. 174, s. 220.

446.—On an indictment for manslaughter it appeared that deceased died about midnight, December 17th, from the effect of severe bruises alleged to have been caused by the prisoner, her husband, striking her with a lighted coal oil lamp. Immediately after receiving the injuries, which was between eight and nine in the evening of the 15th December, she said to the prisoner and to a female relative that she was dying. Four physicians, who saw her almost at once, declared that there was no hope of recovery. One of them who had remained with her till three a. m., on the 17th, returned in the forenoon of that day. He then told her that she would die, and asked her if she was afraid to die; she said "No," and asked him if she was dying then; he answered, "Yes, you are," and she replied, "God help me." He said from the manner of her answering he believed she thought she was dying. She then made the statement which was put in evidence. The doctor asked her how she had caught fire: she said, "Arthur" (the prisoner) "knocked me down with the lamp." He then asked if the prisoner had threatened her before he did it, and she said "Yes." She died about twelve hours after this, from the effect of her injuries. The parish clergyman who was with her from six to nine o'clock on the morning of the 17th, said he addressed her as a woman whom he thought was dying, and that she understood it in that way: that he recommended her to trust in Christ as her only hope, and she said, "Yes, I look to him,"

Held, that this statement was admissible as a dying declaration, and that it made no difference that the second answer was given to a leading question. *Regina* v. *Smith*, 23 C. P. 312; R. S. c. 174, s. 220.

447.—Whenever a joint participation in an enterprise is shewn, any act done in furtherance of the common design is evidence against all who were at any time concerned in it. In this case, the prisoner being charged with being in arms in Upper Canada with intent to levy war against the Queen, evidence was admitted against the prisoner of an engagement between the body of men with whom he had been and the Canadian volunteers, although the same took place several hours after his arrest,

Held, that the evidence had been properly received, as shewing to some extent that the engagement in question had been contemplated by the parties while the prisoner was with them before his arrest. *Regina* v. *Slavin*, 17 C. P. 205.

448.—The prisoner, C., was indicted for aiding and abetting one M. in a murder of which M. was convicted. It appeared that about six in the evening the deceased was with R. and his wife on the river bank, standing near a pile of wood. She saw M. standing behind the pile, who on deceased going up to him struck deceased with a stick, of which he died; deceased ran, when two other men sprang out and followed him, but in a few seconds two of them returned and assaulted her and her husband. She could not identify the prisoner. Two other witnesses saw the blow struck and identified M.; and one witness, B., swore that about six on that evening deceased left his office with R. and his wife, and that about twenty minutes after he saw the prisoner, with M. and another, go into the vacant lot where the wood pile was, M. having a stick in his hand, and that he heard M. say to the others, "Let us go for him." It was also proved by others that the three were together

before the affray, and in a saloon together about nine o'clock afterwards,

Held, that there was not sufficient evidence to warrant the prisoner's conviction, for there was no direct proof that he was present when the blow was struck, and no evidence whatever that he and the others were together with any common unlawful purpose; and the words spoken were in themselves unimportant. *Regina* v. *Curtley*, 27 Q. B. 613.

449.—Two indictments were preferred against the defendants for feloniously destroying the fruit trees respectively of M. and C. The offences charged were proved to have been committed on the same night, and the injury complained of was done in the same manner in both cases. The defendants were put on their trial on the charge of destroying M.'s trees; and evidence relating to the offence charged in the other indictment, was admitted as showing that the offences had been committed by the same person,

Held, that the evidence was properly received. *Regina* v. *McDonald, et al.*, 10 Ont. 553, Q. B.; 5 Can. Law Times, 589; 22 L. J. N. S. 22.

450.—When goods are obtained by a fraud, the court will permit, without previous notice to the accused, the proof of similar frauds having recently been practiced upon others, in order to show the intent of the prisoner. *Queen* v. *Durocher*, 12 R. L. 697, Q. B., Que.

451—The prisoner was indicted along with W., the first count charging W. with forging a circular note of the National Bank of Scotland, and the second with uttering it knowing it to be forged. The prisoner was charged with being an accessory before the fact. Evidence was admitted showing that two persons named

F. and H. had been tried and convicted in Montreal of uttering similar forged circular notes; that these notes were printed from the same plates as those uttered by W.; that the prisoner was in Montreal with F., they having arrived and registered their names there together at the same hotel, and occupied adjoining rooms. At the trial in Montreal, after F. and H. had been convicted on one charge, they admitted their guilt on several others. It was also proved that a number of these circular notes were found on F., and a number on H., and these letters were produced on the trial of the prisoner.

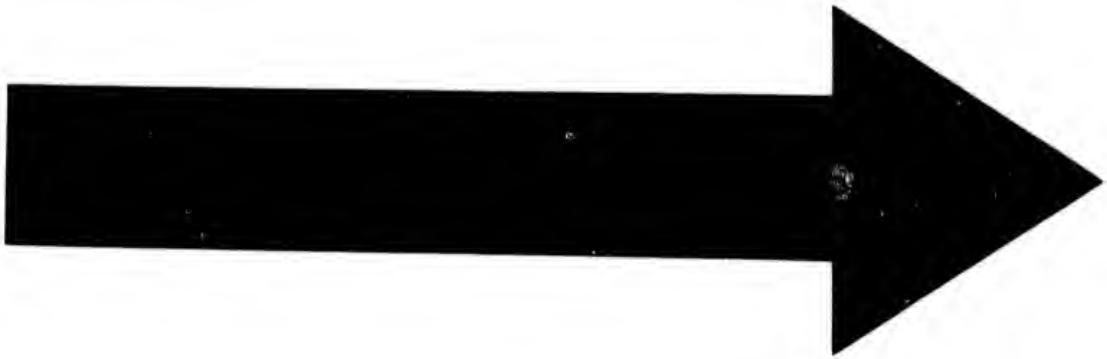
Held, that the evidence was properly received in proof of the guilty knowledge of the prisoner. *Regina* v. *Bent*, 22 L. J. N. S., p. 22.

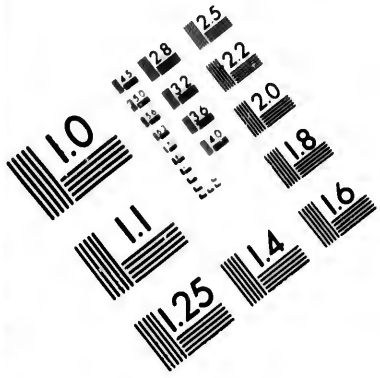
452.—On a trial for murder, the death of the deceased was shown to have been caused by his being stabbed by a sharp instrument. It was proved that the prisoner struck the deceased, but no instrument was seen in his hand. For the prisoner, evidence was offered that on the day preceding the homicide the prisoner had a knife which could not have inflicted the wound of which deceased died; and that, on that day, the prisoner parted with it to a person who held it until after the crime was committed.

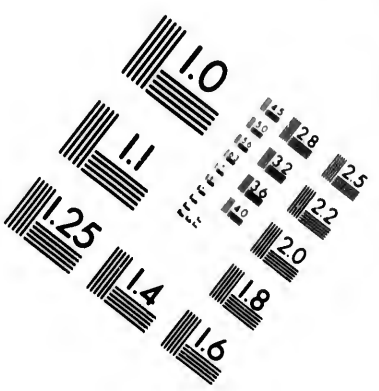
The learned judge at the trial refused to admit this evidence,

Held (GALT, J., dissenting), that the evidence was properly rejected. *Regina* v. *Herod*, 29 C. P. 428, Ont.

453.—An indictment for an assault occasioning actual bodily harm contained a second clause charging a prior conviction for an indictable offence. The offence







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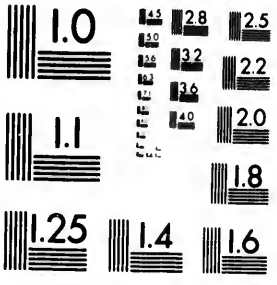

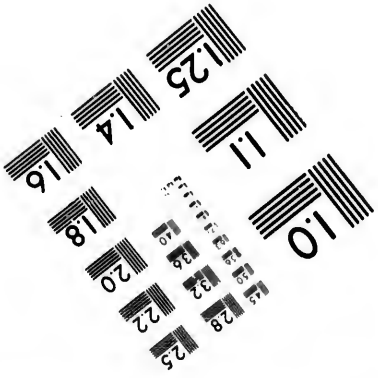

disclosed by the indictment was not one of those for which, after a previous conviction for felony, additional punishment might be imposed. The first part of the indictment only was read at the arraignment, and no allusion was made to the second clause. The prisoner gave evidence of good character. The crown gave some general evidence in rebuttal, and then tendered a certificate to prove a prior conviction, and read the second clause of the indictment. It was held that such evidence was not properly admissible; general reputation only could be attacked, as the proof of a prior conviction affected the sentence, and not the verdict. *Regina* v. *Trigangie*, 8 Can. Law Times, 68; R. S. c. 174, s. 139.

454.—The prisoner's witness having stated that death was caused by two blows from a stick of certain dimensions,

Held, that a medical witness, previously examined for the crown, was properly allowed to be recalled to state that, in his opinion, the injuries found on the body could not have been so occasioned. *Regina* v. *Gagan*, 17 C. P. 530.

455.—The complainant on a trial for rape, with considerable hesitation, stated what had taken place, and concluded by saying that "the prisoner had carnally known her." She was not then pressed with any further questions, but, after the crown had concluded its case, the counsel for the defence submitted that there was no evidence to go to the jury of the commission of the crime charged, inasmuch as the complainant had not stated in her evidence facts from which the jury could judge whether a rape had been committed or not. The court then recalled the witness to

explain what she meant by her former statement, when objection was taken by the defence on the ground that no further evidence could be adduced. Objection overruled, and several questions put, the counsel for the defence being allowed to cross-examine on the evidence so elicited. *Regina* v. *Jennings*, 20 L. C. J. 291, Q. B. 1876.

456.—The theory of the defence, on an indictment for murder, was that the death was caused by the communication of small pox virus by Dr. M., who attended the deceased, and one of the witnesses for the defence explained how the contagion could be guarded against. Dr. M. had not in his examination in chief or cross-examination been asked anything on this subject,

Held, that he was properly allowed to be called in reply, to state what precautions had been taken by him to guard against the infection. *Regina* v. *Sparman and Greaves*, C. P., E. T. 1875; Rob. & Jos. Dig., not yet reported.

457.—A witness for the crown gave evidence quite different from a previous written statement made by him to the prosecutor's counsel. He admitted such statement when shown to him, but said it was all untrue, and made to save himself.

Per WILSON, J.—The prosecutor's counsel was properly admitted to disprove the witness's assertion as to how the statement came to be made, for the fact of its being obtained as he stated would tend very much to prejudice the prosecution, and was therefore not a collateral matter, but relevant.

HAGARTY, J., inclined to the opinion that the witness having fully admitted his previous inconsistent state-

ment, no further evidence relating to it should have been received. *Regina* v. *Jerrett, et al.*, 22 Q. B. 499; R. S. c. 174, s. 234.

458.—At a trial for murder the prisoner's counsel proposed to prove by witness his own deposition at the inquest, and to show by other witnesses that it contained a true statement of his evidence, although the witness alleged it to be incorrect. The learned judge ruled that the coroner must be called to prove the depositions. He was afterwards called to prove them, and the evidence before offered was not again tendered,

Semble, that the ruling as to proof of the depositions was right, they having been taken before a coroner; but,

Held, that the point became immaterial when they were afterwards proved in accordance with it; and that it must be assumed that it was not intended to adduce the other evidence. *Regina* v. *Hamilton*, 16 C. P. 340.

459.—The object of taking depositions is not to afford information to the prisoner, but to secure the testimony. *Ib.*

460.—On a trial for murder, the crown proposed to put in the examination of the deceased in presence of the prisoner as to the circumstances of the murder for which the prisoner was on trial, and have it read to the jury as direct evidence of the facts. The production of this examination was objected to on the ground that it was taken in the form of an information and complaint used when the accused was not yet arrested, that is to say, it was taken as though the complainant were seeking a warrant of arrest,

Held, that the examination of a witness under 32-33 Viet. c. 30, s. 29, was inadmissible where there was no caption to the deposition as given in form M. to show that a charge had been made against the prisoner, and that he, having knowledge of the charge, had a full opportunity of cross-examining the witness. The test of admissibility is the opportunity given the prisoner to cross-examine, he having knowledge that it is his interest so to do. *Regina* v. *Milloy*, 6 L. N. 95, Q. B. 1883; R. S. c. 174, s. 220.

461.—Evidence is properly receivable that a witness at a coroner's inquest had made at other times a statement inconsistent with his testimony. The improper reception of evidence is no ground for *certiorari* to bring up the inquisition. *Regina* v. *Sanderson*, 8 Can. Law Times, 115; 15 O. R. 106; R. S. c. 174, s. 235.

462.—A grand juror may be called to prove that evidence given by a witness on the trial differs from that given by him before the grand jury. *Regina* v. *Gillis*, 6 Can. Law Times, 203, P. E. I.

463.—On a trial for murder, the crown having made out a *primâ facie* case by circumstantial evidence, the prisoner's daughter, a girl of fourteen, was called on his behalf, and swore that she herself killed the deceased without the prisoner's knowledge, and under circumstances detailed, which would probably reduce her guilt to manslaughter,

Held, that the judge was not bound to tell the jury that they must believe this witness in the absence of testimony to show her unworthy of credit, but that he was right in leaving the credibility of her story to them: and if from her manner he derived the impression that she was under some undue influence, it was not

improper to call their attention to it in his charge. *Regina* v. *Jones*, 28 Q. B. 416.

464.—A writ of *habeas corpus ad testificandum* may be issued to the warden of the provincial penitentiary to bring a convict for life before a court of oyer and terminer and general gaol delivery, to give testimony on behalf of the crown in a case of murder. *Regina* v. *Townsend*, 3 L. J. 184; R. S. c. 174, s. 213.

IX.—RIGHT TO BEGIN.

465.—On an appeal from a decision of the police magistrate to the Court of Queen's Bench, the question was raised as to who should begin, the respondent contending, on the one hand, that the appellant was bound to support his appeal, whilst, on the other hand, the appellant affirmed that the appeal was but a new trial, leaving both litigants in the same respective positions of complainant and accused which existed previously before the magistrate,

Held, that the latter pretension was the correct one, and the complainant before the court below was ordered to proceed with his case. *Gibbons* v. *Templay*, 12 R. L. 696, Q. B. 1884; R. S. c. 174, s. 179.

466.—In a case of public prosecution for felony instituted by the crown, the law officers of the crown and those who represent them are in strictness entitled to reply, although no evidence is adduced on the part of the prisoner. *Regina* v. *Quatres Pattes*, 1 L. C. R. 317, Q. B. 1851; R. S. c. 174, s. 179.

X.—CHARGE OF JUDGE.

467.—The rule is the same in criminal as in civil cases, at any rate where the prisoner is defended by counsel, that any objection to the charge of the presiding judge, either for non-direction or misdirection, must be taken at the trial, and if not then taken, it cannot be afterwards raised, especially where the evidence fully sustains the verdict. *Regina* v. *Fick*, 16 C. P. 379.

468.—As to certain threats alleged to have been uttered by the prisoner,

Held, that they were clearly admissible as evidence, and if undue prominence was given to them in the charge, the attention of the learned judge should have been called to it by the prisoner's counsel. *Ib. Regina* v. *Gagan*, 17 C. P. 530.

469.—Remarks as to alleged misdirection in not directing that the jury must be satisfied not only that the circumstances were consistent with the prisoner's guilt, but that some one circumstance was not inconsistent with his innocence. *Ib.*

XI.—VERDICT.

470.—On the 30th October, 1880, in the district of Rimouski, the plaintiff was tried on an indictment found against him on a charge of burglary, and the jury found a verdict of guilty of feloniously receiving, upon which verdict the plaintiff in error was

sentenced to be confined for two years in the penitentiary,

Held, that no such verdict could be rendered on the charge of burglary for which the plaintiff in error was tried, and the judgment pronounced on such verdict, was accordingly set aside. *St. Laurent* v. *Regina*, 7 Q. L. R. 47 ; Q. B. 1881 ; R. S. c. 174, s. 193.

471.—Where the prisoner, having been found guilty of larceny, and sentenced to be imprisoned for life, petitioned in chambers to be liberated, on the ground that the sentence was illegal,

Held, that the judge, under such circumstances, had no power to liberate him, his proper recourse being by petition to the crown for a remission of the punishment in whole or in part, as the Governor-General might see fit. *Plante exp.*, 6 L. C. R. 106, Q. B. 1856.

XII.—ALLOCUTUS.

472.—In capital felonies the *allocutus* is an essential formality, the omission whereof renders the sentence void, and a writ of error will lie where the prisoner prior to sentence was not asked whether he had anything to say. The order made was not that he should be discharged, as prayed for ; but that he should return to the court of oyer and terminer to receive sentence properly. *Regina* v. *Cayotte*, 13 Q. L. R. 214, Que.

XIII.—SENTENCE.

473.—A criminal convicted at a court of oyer and terminer of a capital felony, may be brought to the Court of Queen's Bench for sentence. *Rex* v. *Kenrey*, 5 O. S. 317.

474.—A sentence for corporal punishment in the absence of the accused is illegal. *Regina* v. *Green*, 8 Can. Law Times, 142 ; R. S. c. 178, s. 39.

See *Regina* v. *Smith*, 46 U. C. R. 445.

XIV.—EXECUTION.

475.—The estate of a traitor concerned in the rebellion of 1837, and who accepted the benefit of the 1 Vict. c. 10, is at once vested in the crown under the 33 Hen. VIII. c. 20, s. 2, without offence found. *Doe d. Gillepsie* v. *Wixon*, 5 Q. B. 132.

476.—A writ of *exigi facias* will be awarded by the Court of Queen's Bench upon the application of a prosecutor without its being applied for by the Attorney-General. *Rex* v. *Elrod*, Tay. 120.

477.—The crown may issue a *fi. fa.* for the sale of lands and goods in order to satisfy a fine imposed ; and the person fined may be said to be indebted, and the fine to be a debt. *Regina* v. *Desjardins Canal Co.*, 29 Q. B. 165.

Lands and goods may be included in the same writ, and it may be made returnable before the expiration

of twelve months, the crown not being bound by the 43 Geo. III. c. 1. *Ib.*

This court or a judge may at any time interfere, as exercising the powers of the court of exchequer, to restrain undue harshness or haste in the execution of such writ, although what is complained of may be strictly authorized. *Ib.*

XV. APPEAL.

478.—*Held*, that the prosecutor of a complaint cannot appeal from the order of a magistrate dismissing the complaint; as by R. S. O. c. 74, s. 4, the practice of appealing in such a case is assimilated to that under Dom. Stat. 33 Vict. c. 27, which confines the right of appeal to the defendant. A prohibition was therefore ordered, but without costs, as the objection to the jurisdiction had not been taken in the court below. *In re Murphy and Cornish*, 8 P. R. 420; R. S. c. 178, s. 77.

479. Where the statute enacts that no appeal shall be brought after thirty days from the conviction, it was held that the giving of the notice of appeal and the furnishing of the security within the delay satisfied the law, and that it was not necessary that appellant should bring his appeal to a hearing within thirty days. *Hunter* v. *Griffiths*, 7 P. R. 86, not followed. *Regina* v. *McGawley*, 7 Can. Law Times, 395; R. S. c. 43, s. 108.

XVI.—NEW TRIAL.

480.—No new trial can be granted in cases of felony. *Regina* v. *Daoust*, 10 L. C. J. 221; 16 L. C. R. 485; 1 L. C. L. J. 70; 2 L. C. L. J. 29, Q. B. 1866; R. S. c. 174, s. 268.

481.—On a motion to set aside the verdict on an indictment for nuisance,

Held, that in Lower Canada, where the court was held before one judge in *banco*, and never before more than two, the motion for a new trial in cases of supposed misdirection became impracticable. *Regina* v. *Pruce*, 10 L. C. R. 117, Q. B. 1860.

482.—Where a verdict of guilty had been set aside on account of illegality in the procedure,

Held, that the Court of Queen's Bench in appeal had no power to order a new trial, and to fix a day therefor. *Regina* v. *Chamaillard*, 18 L. C. J. 149, Q. B. 1873.

483.—The Court of Queen's Bench has power to grant a new trial in criminal cases only when sitting as a court of error and appeal. *Regina* v. *Dougall*, 6 R. L. 578, Q. B. 1874.

484—Where no new trial is asked for in a reserved case, none will be ordered. *Regina* v. *Hincks*, 2 L. N. 422; 24 L. C. J. 116, 1879; R. S. c. 174, s. 267.

485.—Where, on a reserved case, the conviction was set aside, and the question had been reserved whether a

new trial should be had, a new trial was ordered in a case of misdemeanor under C. S. L. C. c. 77, s. 58, ss. 2. The authority to make such order as justice requires includes the right to order a new trial when justice requires it. *Regina* v. *Bain*, 23 L. C. J. 327, 1877.

See *Regina* v. *Laliberté*, 1 S. C. R. 117, 1877.

486.—Where after judgment maintaining a writ of error and setting aside a conviction for irregularities in the indictment, application was made on the part of the crown that the prisoner be remanded, the court said this was matter within its discretion. If the indictment had been quashed on demurrer, there was no lack of precedents to justify the court in ordering a fresh indictment to be laid, if it were satisfied that a crime had been committed. It was quite possible if this were a case of murder, and a failure of justice might result, that the court would give time for a *certiorari* to bring up the papers. But this was not a case of that description. In all cases of writs of error that had come before the court, there had never been a remand of the prisoner when the writ had been maintained. The prisoner, no doubt, could be tried again, for he had never been in jeopardy. But the court could not order a new trial, because the judgment was to the effect that no crime was charged. The prisoner was then discharged. *Kelly* v. *Regina*, Que., Q. B. 1882.

487.—*Quære*, whether it is proper to grant a new trial where an individual or a corporation has been once acquitted on an indictment, even in cases of misdemeanor. *Regina* v. *Grand Trunk Ry. Co.*, 15 Q. B. 21.

488.—Where several defendants have been convicted, a new trial, if granted, must be to all. *Regina* v. *Fellowes*, 19 Q. B. 48.

489.—Where points of law were reserved under the Act, and the prisoner, besides relying upon them, moved for a new trial, the court refused to grant it, though the evidence was slight *Regina* v. *Hambly*, 16 Q. B. 617.

490.—Where, after conviction for a capital offence, the proceedings were discovered to have been illegal, there having been no associate judge sitting in court during the trial, on motion on behalf of the crown (the prisoner not moving in any way), the indictment and conviction, with the prisoner, were brought up on *certiorari* and *habeas corpus*, and an order made setting aside all such proceedings, and remanding the prisoner to custody with a view to a new trial. *Regina* v. *Sullivan*, 15 Q. B. 198.

491.—The court has no power to order a new trial in a criminal case reserved under 14-15 Vict. c. 13; but only to decide upon any legal exceptions raised whether there was legal evidence to sustain the indictment, taking it in as strong a sense against the defendant as it will bear, and supposing the jury to have given to it credit to its full extent. *Regina* v. *Baby*, 12 Q. B. 346.

492.—One of the prisoner's counsel at the trial, whilst he was addressing the jury at the close of the case, was suddenly seized with a fit and incapacitated from proceeding any further. No adjournment, however, was applied for, but the other, who was the senior counsel, continued the address to the jury on the prisoner's behalf.

without raising any objection that he was placed at a disadvantage by reason of his colleague's disability; it did not, moreover, appear that the prisoner had been prejudiced by the absence of the counsel alluded to,

Held, no ground for a new trial. *Regina* v. *Fick*, 16 C. P. 379.

493.—On motion for a new trial by a prisoner convicted of murder on circumstantial evidence only,

Morrison, J., who tried the case, expressed himself as not dissatisfied with the verdict; and,

Draper, C.J., having reviewed the evidence at length, came to the conclusion that there was enough to go to the jury, and that their finding upon it could not be declared wrong.

Hagarty, J., *held*, that under the statute a judge is called upon only to say whether there was evidence to go to the jury, not to express any opinion as to their verdict founded upon it.

A new trial was therefore refused; and the court declined to grant leave to appeal. *Regina* v. *Greenwood*, 23 Q. B. 255.

494.—The prisoner having been indicted with two others acquitted, was convicted of the murder of one H., whose body was found in a field adjoining the railway, on Monday, the 10th April, apparently about three days after death, which had clearly been caused by violence. One M., the chief witness for the crown, swore that on the Friday night previously, he heard cries in this field, a quarter of a mile from his house, and that he saw three persons walk quickly past his house from that direction, whom he recognized as the prisoner and two of his sons. He also stated that on

the following morning he saw the prisoner walking along the railway and stopping near where the body was afterwards found, his manner being strange and excited. At the coroner's inquest, held six months before, this witness had declared himself unable to identify the persons seen by him, and had not mentioned seeing the prisoner on Saturday. On motion for a new trial, on the ground, among others, of surprise at these discrepancies, the court refused to interfere. *Regina* v. *Hamilton, et al.*, 15 C. P. 340.

495.—On a reserved case from a conviction for perjury,

Held, that where the alleged perjury was committed in an issue in the circuit court in which it was proved a plea had been filed, but the record produced and proved in the criminal court did not contain such plea, there was no ground for new trial. *Regina* v. *Ross*, 28 L. C. J. 261; 8 L. N. 151.

496.—Upon motion for a new trial upon an information for conspiracy tried at *nisi prius* upon a record from the Queen's Bench,

Held, that affidavits made by some of the jurors that the jury were not unanimous, but believed that the verdict of the majority was sufficient, could not be received as ground for new trial. *Regina* v. *Fellowes*, 19 Q. B. 48.

497.—A new trial may be ordered on a reserved case in misdemeanors where it appears to the court on the evidence that an injustice may have been done to the defendant. *Regina* v. *Ross*, M. L. R. 1 Q. B. 227.

498.—Remarks and review of authorities, as to granting new trials upon the evidence: *Regina* v. *Chubbs*, 14 C. P. 32; *Regina* v. *McElroy*, 15 C. P. 116; *Regina* v.

Fick, 16 C. P. 379; *Regina* v. *Hamilton*, 16 C. P. 340; *Regina* v. *Seddons*, 16 C. P. 389; *Regina* v. *Slavins*, 17 C. P. 205.

499.—The court will not receive affidavits as ground for such applications. See *Regina* v. *Crozier*, 17 Q. B. 275; *Regina* v. *Beckwith*, 8 C. P. 274; *Regina* v. *Fitzgerald*, 20 Q. B. 546; *Regina* v. *Chubbs*, 14 C. P. 32.

500.—The court, on the return of the rule, refused to receive new affidavits stating that the deceased had been seen alive after the date of the alleged murder, and thus setting up an entirely new case. *Regina* v. *Hamilton*, 16 C. P. 340.

501.—The court was not authorized to grant a new trial on the discovery of new evidence, or for the misconduct of the jury. *Regina* v. *Oxentine*, 17 Q. B. 295.

502.—It was held, affirming the judgment of the common pleas, that under the 20 Vict. c. 61, the court was not empowered to grant a new trial in criminal cases on any ground [apart from what was done by either the court or the jury at the trial] such as the alleged discovery of new evidence, or a disappointment in obtaining witnesses. *Regina* v. *Gray*, 1 A. & E., 501, *per* Sir J. B. Robinson.

503.—The withholding from the court confessions made before the coroner, for fear that they would prejudice the prisoner, would render the application for a new trial irregular. *Regina* v. *Finkle*, 15 C. P. 453.

XVII.—CERTIORARI.

504.—The right of *certiorari* exists even where the statute declares there shall be no appeal. There must be some previous summons or notice to the party charged, of the hearing of the accusation, unless it is dispensed with by statute, or waived by the party appearing, pleading and defending. Asking an adjournment for the purpose of procuring evidence is not necessarily a waiver. *Regina* v. *Frooman*, 6 Can. Law Times, 499, Man.

505.—The court, upon application for *certiorari*, may look at the evidence to determine the question of jurisdiction. *Regina* v. *McDonald*, 7 Can. Law Times, 376, following *Hawes* v. *Hart*, 18 N. S. Rep. 42, N. S.; *Regina* v. *Green*, 8 Can. Law Times, 99; 12 P. R. 373, Ont.

506.—Where an order was granted under 32-33 Vict. c. 9, s. 11, changing the place of trial from Quebec to Montreal, and ordering that all the proceedings had before a coroner there should be transmitted to the Court of Queen's Bench at Montreal, and such order for transmission of proceedings being obeyed,

Held, that a writ of *certiorari* to produce a return of the proceedings, in order that the inquest might be quashed for illegality, was unnecessary, and a petition presented in chambers for the issue of such writ would not be granted. *Regina* v. *Brydges*, 18 L. C. J. 94, Q. B. 1874.

XVIII.—ERROR.

507.—On the hearing of a writ of error from the crown side of the court, the judge who sat in the proceedings under examination for error, is disqualified. C. S. L. C. c. 69, ss. 4, 56, 67. *The Queen* v. *Dougall, et al.*, Ramsay, A.C., 200 : R. S. c. 174, s. 265.

508.—The proper proceeding to reverse a judgment of the court of quarter sessions is by writ of error, and not by *habeas corpus*. *Regina* v. *Powell*, 21 Q. B. 215.

509.—Error lies only for matter of record, so the charge of the judge will not be ground of error, as it is not of record. *Defoy* v. *The Queen*, 22 L. C. J. 133.

510.—Error, as distinguished from appeal, will lie in a criminal case from the court of error and appeal to the Queen's Bench, and the writ of error may be as nearly as possible in the form of a writ of appeal given by the orders of the court published in 1850. *Regina* v. *Whelan*, 23 Q. B. 108, Ont.

511.—Whether the police court is a court of justice within 32-33 Vict. c. 21, s. 18, or not, is a question of law which may be reserved by the judge at the trial, under the Consolidated Statutes of Upper Canada, chapter 112, section 1, and where it does not appear by the record in error that the judge refused to reserve such question, it cannot be considered upon a writ of error. *Ib.*

512.—Where it was alleged on a writ of error that in the course of the trial, which was for murder, and in which the prisoner was found guilty, a medical witness was

ordered to make an analysis for the information of the jury, and that he had done so and made a report, but that the report so made was not placed before the jury, as it ought to have been, and that thereby the prisoner was deprived of the advantage of important evidence in his favour,

Held,—as the report could not have been submitted to the jury except as part of the evidence, and as neither the evidence nor the ruling of the judge in relation to it could be brought under the consideration of the court by means of a writ of error, that the plaintiff in error had no right to have the record amended, so as to place before the court the said report, and the entries in the register of the court below respecting it: nor could the plaintiff cause the record to be amended so as to show whether the judge who presided at the trial wrote the notes or caused them to be written by another person, nor so as to show what precautions were taken for the safe-keeping of the jury while deliberating upon their verdict. *Duval* v. *The Queen*, 14 L. C. R. 52, Q. B. 1863.

513.—The Court of Queen's Bench in appeal cannot grant a writ of error without the fiat of the Attorney-General. *Notman* v. *Regina*, 13 L. C. J. 258, Q. B. 1868.

514.—The issue of a writ of error is illegal where it is allowed and signed by the crown prosecutor in the name of the Attorney-General, instead of by the Attorney-General himself. *Dunlop* v. *Regina*, 11 L. C. J. 271, and 3 L. C. L. J. 57, Q. B. 1867.

515.—On the hearing of a writ of error, the plaintiff in error should be personally before the court, and if he is confined, should be brought up on *habeas corpus*. *Laurent* v. *Regina*, 1 Q. B. R. 302.

XIX.—RESERVED CASE.

516.—The trial is not terminated until sentence is rendered, and "a question which has arisen at the trial" does not necessarily mean a question raised by the defence, but one which took its rise at the trial. *Regina* v. *Bain*, 23 L. C. J. 327, 1877; *Regina* v. *Feore*, 3 Q. L. R. 219, 1877; R. S. c. 174, s. 259.

517.—On the trial of a prisoner who had been extradited from the United States for felony,

Held, that no question of law can be reserved and heard until after the conviction. *Regina* v. *Paxton*, 2 L. C. L. J. 162, Q. B. 1866.

518.—A reserved case cannot be had where there has been neither trial nor conviction; and the question whether the crown could enter a *nolle prosequi* before trial cannot alone be made the subject of such case. *Regina* v. *Lalanne*, 3 L. N. 16, 1879.

519.—Prisoner need not be present at the hearing of a reserved case. *Regina* v. *Glass*, 21 L. C. J. 245, 1877.

520.—During the argument a reserved case may be amended at the defendant's request by adding the evidence taken at the trial. *Regina* v. *Ross*, M. L. R. 1 Q. B. 227.

521.—Where a case reserved for the consideration of the full bench does not contain a question which it is essential to decide in connection therewith, it must be sent back for amendment. *Regina* v. *Provost*, M. L. R. 1 Q. B. 473.

522.—On a reserved case by the judge of sessions at Montreal, to obtain the opinion of the court upon the question whether the quarter sessions can try a case of forgery created felony by statute, the question arose whether the Queen's Bench had jurisdiction under the statute to hear such a reserved case.

Per curiam, the first difficulty is whether this court has any jurisdiction under the statute to hear a case reserved by the judge of sessions trying a case under the Speedy Trials Act. The Act which grants the criminal appeal is very special. It says, "When any person has been convicted of any felony or misdemeanor at any criminal term of the said Court of Queen's Bench, or before any court of oyer and terminer and gaol delivery, or quarter sessions, the court before which the case has been tried may in its discretion reserve any question of law which has arisen on the trial," etc. The question is whether the speedy trials court comes under any of these denominations. The court is of opinion that the provisions of the law allowing a speedy trial in certain cases creates a new jurisdiction, and the law as to the reservation of cases does not apply to it. The rule is that the appeal cannot be extended beyond the cases laid down. Reserved case sent back. *Roy* v. *Malouin*, 4 L. N. 372; 2 Q. B. R. 66.

XX.—CONVICTIONS.

523.—*Held*, that a police magistrate cannot reserve a case for the opinion of a superior court under Consolidated Statutes of U. C. c. 112, as he is not within the terms of that Act.

Held, also, that a defendant is not entitled to remove proceedings by *certiorari* to a superior court from a police magistrate or a justice of the peace after conviction, or at any time, for the purpose of moving for a new trial for the rejection of evidence, or because the conviction is against evidence, the conviction not being before the court and no motion made to quash it. But,

Held, that even had the conviction in this case been moved to be quashed, and an order *nisi* applied for upon the magistrate and prosecutor for a mandamus to the former to hear further evidence, which he had refused, both motions would have been discharged, the magistrate appearing to have acted to the best of his judgment and not wrongfully, and his decision as to the further evidence involving a matter of discretion with which the court would not interfere.

The court declined to hear discussed the question whether the police magistrate in this case, if appointed only by the Ontario government, was legally or validly appointed, as his appointment should have been by the Dominion, the patent by the Ontario government only being produced, and it not appearing that a commission by the Dominion had issued to him, nor that

any search or enquiry had been made at the proper office as to the fact, the only other evidence as to the appointment, besides the mere production of the Ontario patent, being the defendant's affidavit, stating that the magistrate had no authority or appointment from the crown or the Governor-General of the Dominion, and that he knew this "of common and notorious report,"

Held, also, that the information in this case was not objectionable for not setting out the false pretences of which the defendant was convicted, as it was in the form in which an indictment might have been framed: and moreover the objection was met by the 32-33 Vict. c. 32, s. 11, and by 32-33 Vict. c. 31, s. 67. *Regina* v. *Richardson*, 8 Ont. Rep. 651 Q. B.: R. S. c. 178, s. 79: c. 176, s. 33.

524.—A warrant was issued by a magistrate for the apprehension of the defendant, who was brought before another magistrate thereon, convicted and fined. Subsequently the magistrate who had issued the warrant caused the defendant to be summoned before him for the same offence, and again convicted and fined him, after refusing to receive evidence of the prior conviction.

The court quashed the second conviction, with costs.

Even assuming that the first conviction was void by reason of the defendant having been brought before a magistrate other than the one who issued the warrant, his appearance and pleading thereto amounted to a waiver, and at any rate the magistrate who convicted the second time could not take advantage thereof. *Regina* v. *Bernard*, 4 Ont. Rep. 603, Q. B.

525.—The defendant sold to C., amongst other things, a horse-power and belt, part of his stock in the trade of

a butcher, in which he also sold a half interest to C. The horse-power had been hired from one M., and at the time of the sale, the time of hiring had not expired. At its expiry, M. demanded it, and C. claimed that he had purchased it from defendant. The defendant then employed a man to take it out of the premises where it was kept, and deliver it to M., which he did. The defendant was summarily tried before a police magistrate and convicted of an offence against 32-33 Vict. c. 21, s. 110 (D).

Held, that the conviction was bad, there being no offence against that section, and no jurisdiction in the police magistrate to try summarily; and that it was bad also in not showing the time and place of the commission of the offence.

Remarks upon the improper use of the criminal law in aid of civil rights. The conviction was quashed with costs. *Regina* v. *Young*, 4 Ont. Rep. 400, Q. B.: 4 Can. Law Times, 283.

526.—The 32-33 Vict. c. 32, s. 17, empowers the magistrate to imprison any one convicted of keeping a disorderly house "with or without hard labour for any period not exceeding six months, or may condemn him to pay a fine not exceeding, with the costs in the case, $100, or to both fine and imprisonment, not exceeding the said period and sum." The magistrate sentenced the petitioner to the full amount of $100 and to imprisonment "with hard labour." The court distinguished the case from that of *Exp. Williams*, as in this case the variation was not depending upon an amendment, and it could not be presumed here that the legislature meant either imprisonment with hard labour, or without it. *Exp. Somers*, Ramsay A. C. 185.

527.—Where a person is condemned by a magistrate acting under the 32-33 Vict. c. 32, ss. 2, 3, for an aggravated assault, to pay a fine of $100 and to six months' imprisonment with hard labour, there is excess of jurisdiction, inasmuch as the statute only authorizes the double penalty of fine and imprisonment, which does not include hard labour; and the prisoner was discharged on *habeas corpus*. *Ex parte Burns*, Ramsay A. C. 184.

528.—Where a prisoner has been condemned to a punishment greater than the law allows by a magistrate or other inferior tribunal, he will be discharged on *habeas corpus*. *Ex parte Burns*, Ramsay A. C. 188.

529.—A judgment for too little is as bad as a judgment for too much, and so a condemnation to pay $100 and costs, when the statute creating the offence imposes a penalty of $200 and costs, is bad. *Regina* v. *Bright*, 1 L. J., N. S. 240.

530.—A conviction for keeping a house of ill fame was held bad on *habeas corpus*, because of its uncertainty in not naming a place where the offence was committed, and because it did not contain an adjudication of forfeiture of the fine imposed. The meaning of 32-33 Vict. c. 31, s. 7, (Rev. Stat. c. 176, s. 11), is that the amount of the costs in the case shall be deducted from $100, and that the balance shall be the utmost limit of the fine, and a condemnation to pay $100 without costs is illegal. *Regina* v. *Cyr*, 7 Can. Law Times, 117; 12 P. R. 24, Ont.

531.—A statute (32-33 Vict. c. 28) empowered a magistrate to sentence a person convicted to imprisonment with or without hard labour for two months, or by a fine

not exceeding $85, or by both such fine and imprisonment. By an amending Act (37 Viet. c. 43), it is provided that "the term for which any offender may be sentenced to imprisonment, under the Act of 1869, is hereby extended to six months." The magistrate sentenced petitioner to the fine of $50 and to imprisonment for six months, with hard labour. The majority of the court interpreted the amending Act to mean that the imprisonment there mentioned was that of the previous Act, and that it was only the term that was extended. *Ex parte Williams*, 19 L. C. J. 120.

532.—On a petition for *habeas corpus* it appeared that the petitioner had been condemned by the recorder under the provisions of 32-33 Viet. c. 32, s. 17, to a fine of $100, and to be imprisoned at hard labour for the space of six months.

Per curiam, the statute permits three kinds of punishment: 1st, imprisonment not exceeding six months, with or without hard labour; 2nd, fine, not exceeding, with the costs, $100; 3rd, fine and imprisonment, not exceeding the said period and term.

It is contended for the conviction that the third form of penalty allows fine and imprisonment *with hard labour*. To arrive at such a conclusion we must ignore not only the common use of a technical term, but the plain meaning of a word. Imprisonment does not include hard labour, which is an aggravation of the penalty, just as is solitary confinement, bread and water, and whipping. Again, imprisonment in the language of the common law has never been held to permit of any addition. Fine and imprisonment are the commmon law punishments for all misdemeanors, and without the authority of a statute no other punishment has ever been added.

Conviction quashed in two cases. *Lefevre ex parte* and *Dufresne ex parte*, 4 L. N. 253, Q. B. 1881. See *Hodge* v. *The Queen*, P. Council, 1885; 28 L. C. J. 54.

533.—Certainty and precision are required in the statement of an offence under a penal statute, and an information charging several offences in the disjunctive is bad; and a conviction in such a case will be quashed where it sets forth that the defendant was guilty of all the offences conjunctively; and the confession of the accused will not aid this defect. *Ex parte Hogue*, 3 L. C. R. 94.

534.—A summons issued for malicious injury to property must be founded on a complaint under oath and a conviction in which it is stated that the offence was committed within the last eight days is bad for uncertainty. *Ex parte Hook*, 3 L. C. R. 496, Que.

535.—Where the statute creates several offences, one of which is charged in the information, a conviction for another offence, subject to the same penalty, will be set aside. *Ex parte Thompson*, 12 L. C. J. 285, Que.

536.—Where the prisoner had been arrested for a theft committed in the United states, and had submitted to the jurisdiction of a Canadian magistrate, and had been condemned to eight months' imprisonment, and afterwards applied by *habeas corpus* for liberation,

Held, that even the consent of the prisoner did not give jurisdiction to the magistrate where none otherwise existed. *Regina* v. *Hebert*, 5 R. L. 424, S. C. 1874.

537.—Where a statute empowers two justices to convict, a conviction by one is void. *In re Crow*, 1 L. J. N. S. 302.

See also *Graham* v. *McArthur*, 25 Q. B. 478.

538.—On motion to quash a conviction by two justices of the peace of the county of Norfolk for an assault,

Held, that stating the offence to have been committed at defendant's place in the township of Townsend was sufficient, for C. S. U. C. c. 3, s. 1, s-s. 37, shows that township to be within the county. *Regina* v. *Shaw*, 23 Q. B. 616.

539.—Under the statute for repressing riots at elections, no power is given to magistrates to convict summarily; the offenders must be tried by a jury. *Ferguson* v. *Adams, et al.*, 5 Q. B. 194.

540.—Where the conviction does not set forth such facts as are necessary to enable the court to see whether there has been a violation of the law it will be set aside. *Ex parte Bues*, S. C. Montreal, 1877.

541.—The minute of a conviction should state the adjudication of the justices both as to the amount of the fine and the mode of enforcing it, whether by distress or imprisonment, so as to be a complete judgment in substance. After the adjudication the justices have no power to vary or add to their judgment. *Regina* v. *Perley*, 6 Can. Law Times, 546, N. B.; R. S. c. 178, s. 53.

542.—A statute declared unlawful certain acts committed by any person not legally empowered without the owner's permission. A conviction stating the acts done, but not negativing the power and permission was

Held, bad. *Regina* v. *Morgan*, 8 Can. Law Times, 29 Man.

543.—Where the conviction describes the presiding magistrate as the police magistrate of the district of Mont-

treal, whereas he was a justice of the peace acting in virtue of 33 Vict. c. 12, Que., the defendant was discharged. *Ex parte Senecal*, 3 L. N. 267.

544.—In a conviction for assault it was held unnecessary to show on the face of the conviction that complainant prayed the magistrates to proceed summarily, for the form allowed by the Consolidated Statutes of Canada, chapter 103, section 50, was followed; and if there was no such request, and therefore no jurisdiction, it should have been shown by affidavit,

Held, also, that it was no objection that the assault was not alleged to be unlawful. *Regina* v. *Shaw*, 23 Q. B. 616.

See also, *in re Switzer, et al.*, 9 L. J. 266. *Bayley q. t.* v. *Curtis*, 15 C. P. 366.

545.—A request to proceed summarily under the Summary Jurisdiction Act need not be in writing. A conviction awarding fine and costs, and in default, imprisonment, was held good, and that a distress warrant to levy the fine need not to have been first ordered to issue. *Regina* v. *Smith*, 18 L. J. N. S. 10.

546.—The fact that the magistrate was the father of the complainant suffices to quash the conviction. *Regina* v. *Langford*, 8 Can. Law Times, 110, Ont.

547.—The court will not presume that Sault St. Louis was a "land set apart or reserved for Indians," unless it be set forth in the complaint, and so where a party was convicted before the police magistrate for having, "within the space of six months from the time that the offence herein mentioned was committed, to wit, on the 9th day of September, in the year aforesaid, at Sault St. Louis aforesaid, in the district aforesaid, in

the province of Quebec, and Dominion of Canada, unlawfully and knowingly kept a house wherein intoxicating liquor, to wit, whiskey, was sold contrary to the statute," etc., the prisoner was discharged. *Ex parte Assonkalisson.*—Ramsay A. C. 183.

548.—A magistrate, in order to have a good justification under a conviction and warrant, must give in evidence a conviction not illegal on the face of it, and a warrant of distress supported by that conviction, and not on the face of it an illegal warrant. *Eastman* v. *Reid*, 6 Q. B. 611.

549.—On application to quash a conviction, facts not appearing in the conviction will not be noticed by the court for the purpose of impeaching it on any ground other than want of jurisdiction. The court has no power to either review the sessions in a matter within their jurisdiction, or to compel them by mandamus to re-hear an appeal. *Regina* v. *Grainger*, 18 L. J. N. S.: 46 Q. B. 196.

550.—Justices of the peace out of session have no jurisdiction to try misdemeanors in a summary manner, except on special statutory authority, and it was

Held, therefore, that a conviction by two justices of the peace, under 46 Vict. c. 15 (D), for assisting in the distilling of spirits contrary to that Act, must be quashed. *Regina* v. *Carter*, 5 Ont. Rep. 651 Q. B.; 4 Can. Law Times, 339.

551.—Imprisonment in case of immediate non-payment of a fine imposed under section 90 of the Indian Act, 1880, cannot be adjudged where the offence is selling liquor to Indians on board of a vessel. In this case the conviction must follow the form I. i., 32-33 Vict.

c. 31 (Rev. Stat. c. 178, form J. i.), and award a distress in default of payment of the fine. The right of *certiorari* is not taken away by section 97 of the Act where the justice exceeds his jurisdiction. *Ex parte Goodine*, 7 Can. Law Times, 22, N. B., R. S. c. 43, ss. 95, 108.

552.—A conviction by two justices for taking certain timber feloniously or unlawfully,

Held, bad, for it should not have been in the alternative; if the taking was unlawful only, not felonious, it should have shown how unlawful; and also that the offence came under some statute which gave the justices power to convict. *Regina* v. *Craig*, 21 Q. B. 552.

553.—A conviction by a magistrate stated that defendant did, on, etc., at, etc., being a public highway, use blasphemous language, contrary to a certain by-law, which was passed almost in the words of the Consolidated Statutes of Upper Canada, chapter 54, section 282, sub-section 4; but there was no statement of the words used,

Held, bad.

Semble, also, that there was nothing in the evidence set out giving the magistrate jurisdiction to act. *In re Donelly*, 20 C. P. 165.

554.—A conviction, purporting to be under the Consolidated Statutes of Canada, chapter 93, section 28, charging that defendant, at a time and place named, wilfully and maliciously took and carried away the window sashes out of a building owned by one C., against the form of the statute, etc., without alleging damage to

any property, real or personal, and without finding damage to any amount, was

Held, bad, and quashed. *Regina* v. *Caswell*, 20 C. P. 165.

555.—It is not necessary, in a conviction for selling liquor without a license, to mention the statute under which the conviction took place, nor that it should appear on the face of the conviction that the prosecution commenced within twenty days of the commission of the offence, nor to specify that it is a first or second offence, nor to whom the liquor was sold; neither is it illegal to award imprisonment in default of distress, etc. *Regina* v. *Strachan*, 20 C. P. 182. See also *Reid* v. *McWhinnie*, 27 Q. B. 289.

556.—A conviction under the Consolidated Statutes of Upper Canada, chapter 49, section 95, stating that defendant wilfully passed a gate without paying, and refusing to pay toll,

Held, good.

Quære, whether it would be sufficient to allege only that he wilfully passed without paying, without in any way showing a demand. *Regina* v. *Caister*, 30 Q. B. 247.

557.—On a motion to set aside a conviction and warrant of commitment on the grounds, 1st, that the conviction was not in the magistrate's office, but in that of the clerk of the peace; 2nd, that the conviction did not contain a clause of distress; and 3rd, that the conviction only warranted the imprisonment, without hard labour, whereas the prisoner had been committed with hard labour,

Held, that the prisoner must be discharged, but on the last ground only. *Regina* v. *Yeomans*, 6 P. R. 66. See *Regina* v. *Munroe*, 24 Q. B. 44.

558.—A commitment setting forth a conviction that the defendant unlawfully did commit an aggravated assault, omitting the word maliciously, suffices.

A typographical error in the date of the commitment is not fatal where the date of sentence is apparent from the commitment and the record. *Ex parte McIntosh*, 5 L. N. 4.

559.—A conviction for keeping a house of ill-fame on the 11th of October, and on other days and times before that day,

Held, sufficiently certain as to the time. The information described the parties as of the township of East Whitby, and had "County of Ontario" in the margin. It charged that they kept a house of ill-fame, but did not expressly allege that they did so in that township or county. The evidence, however, showed that the place at which such house was kept was in East Whitby, in which the justices had jurisdiction,

Held, sufficient. A *certiorari* to remove the conviction was therefore refused. *Regina* v. *Williams, et al.*, 37 Q. B. 540.

560.—The name of the informant or complainant must in some form or other appear on the face of a conviction. *In re Hennesy, et al.*, 8 L. J. 299.

561.—Where a form of conviction is not sanctioned by any statute, it must be legal according to the principles of the common law; and in that case a conviction which does not express that the party had been summoned,

nor that he appeared, nor that the evidence was given in his presence, cannot be supported. *Moore* v. *Jarron*, 9 Q. B. 233.

562.—As to certain objections suggested to a conviction, it was held a sufficient answer that the conviction followed the form prescribed by the Act, Consolidated Statutes of Canada, chapter 103, which was intended as a guide to magistrates, and to prevent failure of justice from trivial objections. *Reid* v. *McWhinnie, et al.*, 27 Q. B. 289.

563.—The charge in a conviction must be certain, and so stated as to be pleadable in the event of a second prosecution for the same offence. *Regina* v. *Hoggard*, 30 Q. B. 152.

564.—A conviction under a by-law must show the by-law, that the court may judge of its sufficiency. *Regina* v. *Ross*, M. T. 3 Vict., Ont

565 —And it must show by what municipality the by-law was passed. *Regina* v. *Osler*, 32 Q. B. 324.

566.—*Quære*, whether it is essential to state the date or title of the by-law. *Ib.*

567.—Upon conviction under the Quebec License Act the magistrate may condemn the defendant to pay the costs of the warrant of commitment and of his conveyance to jail, and may fix the amount of such costs. *Ex parte Jones*, 1 Q. B. R. 100.

568.—On motion to discharge prisoner on *habeas corpus* on conviction before a police magistrate, the conviction charged that the prisoner did "unlawfully and maliciously cut and wound one Mary Kelly, with intent then and there to do her grievous bodily harm,"

Held, that the addition of the words, "with intent to do grievous bodily harm," did not vitiate the conviction, and that the prisoner might be lawfully convicted of the statutory misdemeanor of malicious wounding,

Held, also, that imprisonment at hard labour for a year was properly awarded under 38 Vict. c. 47. *Regina* v. *Boucher*, 8 P. R. 20.

569.—In any case tried under 32-33 Vict. c. 32, s. 2, ss. 3, 4, 5 or 6, if the prisoner be condemned to fine and imprisonment, hard labour cannot be added to the sentence of imprisonment. *Exp. Carpentier*, 9 L. N. 281, Que.

570.—A conviction under 32-33 Vict. c. 28, for keeping a house of ill-fame, ordered payment of a fine and costs, to be collected by distress, and in default of distress ordered imprisonment,

Held, good. *Regina* v. *Walker*, 7 O. R. 186, Q. B.

571.—It is unnecessary to name any time for payment of the fine, as it would then be payable forthwith. *Regina* v. *Caister*, 30 Q. B. 247.

572.—Service of notice of appeal to the sessions being the first proceeding on an appeal, takes away the right of *certiorari*. The conviction was held bad in that where imprisonment is directed for non-payment of a penalty, the adjudging of a distress of the goods to levy it, and then imprisonment in case of the distress proving insufficient is invalid and an excess of jurisdiction. *Regina* v. *Howard*, 6 Can. Law Times, 526, Ont.

573.—The court refused to grant a mandamus to compel two justices of the peace to issue execution upon a

conviction under 6 Will. IV. c. 4, s. 2, for selling spirituous liquors without license, the conviction having been founded upon the written statements of the informer, and the oath of one other witness; there being a doubt, under the statute, whether the information ought not also to be on oath. *Regina* v. *McConnell*, 6 O. S. 629.

XXI.—COMMITMENT.

574.—One justice may sign a warrant of commitment. A warrant addressed to the keeper of the common gaol at the City of Winnipeg, instead of to the keeper of the common gaol of the Eastern Judicial District (which is in the City) suffices. A commitment stating the offence as follows: "did embezzle the sum of $104, the property of," etc., is illegal. Embezzlement is a statutory crime and can be charged against certain persons only. As in perjury it must be shown that the oath was taken in judicial proceedings, so in embezzlement the relationship of the accused to the person despoiled must appear. *Regina* v. *Holden*, 6 Can. Law Times, 503; 1 Man. Law Rep. 579.

575.—A commitment on a judgment for a penalty and costs, not stating in the body of the commitment a recital of the amount of costs, is bad. *Regina* v. *Bright*, 1 L. J., N. S. 240, Ont.

576.—Where the warrant of commitment for selling liquors contrary to the provisions of the Mining Act did not mention any specific sum as being the costs of the arrest and conveying to jail, it was set aside. *Regina* v. *Poulin*, 12 Q. L. R. 54, Que.

577.—If the statute under which a person is convicted distributes the fines in positive terms, it is not necessary that the commitment should take notice of the conviction, nor need it say to whom costs are payable. *Ex parte Assonkalisson*, Ramsay, A. C. 183; 1876.

578.—Where the magistrate has jurisdiction only in case a plea of guilt is entered and it does not appear by the commitment reciting the conviction that any such plea had been entered, the conviction was quashed. *Regina* v. *Collins*, 8 Can. Law Times, 85; 5 Man. Law Rep. 136.

579.—In determining upon a motion to discharge a prisoner whether a warrant of commitment is defective, the court cannot go behind the conviction. The proper course where there is a conviction sufficient in law and a variance between it and the commitment is to enlarge the motion so as to enable the magistrate to file a fresh warrant in conformity with the conviction. In the conviction the offence was alleged to have been committed in 1887 and in the warrant in 1888. *Regina* v. *Larin*, 8 Can. Law Times, 371; 12 P. R. 642, Ont.; R. S. C. c. 176, s. 24.

580.—A warrant of commitment in execution cannot be backed by a justice of the peace of another county, and the constable having acquired and possessing no authority to execute it in the foreign jurisdiction, the arrest and detention thereunder were illegal. *Regina* v. *Jones*, 8 Can. Law Times, 332; R. S. c. 178, s. 62.

581.—The accused was convicted before a magistrate, and condemned to pay a fine and costs, with imprisonment in default of payment. Upon his arrest he paid the constable part of the sum exigible, and was released. It was held that he could not be arrested in default of his paying the balance. *Ex parte Lapointe*, 11 Q. L. R. 251, Que.

XXII.—BAIL.

582.—It is laid down as law by the most distinguished judges in England that the principle upon which a party committed to take his trial for an offence may be bailed is founded upon the legal probability of his appearing to take his trial; that such probability does not in law exist where a crime is of the highest magnitude, the evidence in support of the charge strong, and the punishment the highest known to the law. And where the penalty is very severe bail will not be granted. *Huot ex parte*, 8 Q. L. R. 28, 1882; R. S. c. 174, ss. 81 *et seq*.

583.—A recognizance of bail put in on behalf of a prisoner recited that he had been indicted at the court of general sessions of the peace for two separate offences, and the condition was, that he should appear at the next sittings of said court, and plead to such indictment as might be found against him by the grand

jury. At the next of said sittings the accused did not appear, and no new indictment was found against him,

Held, that the recitals sufficiently showed the intention to be that the accused should appear and answer the indictments already found, and that an order estreating the recognizance was properly made. *Re Gauthreaux's Bail*, 9 P. R. 31.

584.—On an information against the bail or surety of a person charged with subornation of perjury,

Held, that, after the accused has pleaded guilty to an indictment, no default can be entered against him, except on a day fixed for his appearance, and that it is the duty of the court to estreat the recognizance in cases like the present. *Regina* v. *Croteau*, 9 L. C. R. 67, Q. B. 1858.

585.—And in another case of the same kind,

Held, that the mere failure of the party to answer when called, in the term subsequent to that in which he was arraigned, could not operate as a forfeiture of his bail. *The Attorney-General* v. *Beaulieu*, 3 L. C. J. 17, S. C. 1858.

586.—The court will not bail a prisoner accused of shooting with intent to murder, if the evidence be positive and strong against the prisoner. *Ex parte Cheevers*, judgment, June, 1880. Ramsay, Ap. C. 180.

587.—The court refused to discharge a prisoner on a *habeas corpus*, charged with having murdered his wife in Ireland, communication having been made by the provincial to the home government on the subject, and no answer received and the prisoner having been in cus-

tody less than a year ; and bail in such a case will not be allowed until a year from the time of the first imprisonment, although no proceedings have been taken by the crown. *Rex* v. *Fitzgerald*, 3 O. S. 300.

588.—On an application by prisoners in custody on a charge of murder, under a coroner's warrant, to be admitted to bail, it is proper to consider the probability of their forfeiting their bail if they know themselves to be guilty. Where in such case there is such a presumption of the guilt of the prisoners as to warrant a grand jury in finding a true bill, they should not be bailed. The fact of one assize having passed over since the committal of the prisoners without an indictment having been preferred, is in itself no ground for bail. The application is one of discretion and not of right, the prisoners not having brought themselves within 31 Car. II. c. 2, s. 7, by applying on the first day of the assize to be brought to trial. *Regina* v. *Mullady et al.*, 4 P. R. 314.

589.—Application was made on a petition for *habeas corpus* to admit to bail a prisoner charged with the murder of his wife's mother, the prisoner filing affidavits of his innocence. On the other hand some forty witnesses had been examined at the coroner's inquest, and the evidence against him was very strong. After argument, and the most careful deliberation on the part of the judge before whom the application was made, bail was refused. *Corriveau ex parte* 6 L. C. R. 249, Q. B. 1856.

590.—Where the grand jury have found a true bill for murder, bail will generally be refused. In this case there was evidence, if believed, sufficient to warrant a conviction, and only one assize had elapsed without a

trial. An application to admit to bail was refused, and the prisoners left to their remedy under the Habeas Corpus Act. Remarks as to the considerations which should govern the exercise of discretion in granting or refusing bail. *Regina* v. *Keeler et al.*, 7 P. R. 117.

591.—On a trial for murder the jury differed in opinion and were discharged. Application was then made by prisoner's counsel for permission to give bail for his appearance to take another trial. A writ of *habeas corpus* was allowed and argued at great length. On the last day of the term the application was granted, and accused admitted to bail, himself in £500 and his sureties in £250 each. *Baker ex parte* 3 R. C. 45, Q. B. 1872.

592.—A prisoner charged with murder may in some cases be admitted to bail; and on such an application the court may look into the information, and if it find good ground for a charge of felony, may remedy a defect in a commitment, by charging a felony in it. *Rex* v. *Higgins*, 4 O. S. 83.

593.—Where the prisoners were convicted of felony at the sessions, and a case reserved for the Queen's Bench, which had not been argued, the judge in chambers refused to bail except with the consent of the Attorney-General. *Regina* v. *Sage*, 2 C. P. 138.

594.—The guilt or innocence of a prisoner is not the question to decide on application for bail on a criminal charge. The seriousness of the charge, the nature of the punishment and evidence, and the probability of the prisoner appearing to take his trial, are the important questions to be considered,

Held, where it was shewn that the prisoner attempt-

ed to bribe the constable to allow him to escape, that the probability of his appearing to take his trial was too slight for the judge to order bail. *Regina* v. *Byrnes*, 8 L. J. 76.

595.—Bail was refused, although it was some months before a criminal court competent to try the case would sit. *Ib.*

596.—*Held*, (before the passing of 16 Vict. c. 179), that magistrates were not liable for refusing to admit to bail on a charge of misdemeanor in the absence of any proof of malice. *Conroy* v. *McKenney*, 11 Q. B. 439. See *McKinley* v. *Munsie*, 15 C. P. 230.

597.—On *habeas corpus*, that, under the circumstances of the case, the prisoners were entitled to bail, and would be admitted to bail were it not for the order of the court already given (No. 608 *post*) which, under 24 Geo. III. chapter 1, section 3, prevents any other judge from interfering with the judgment thus pronounced, and that such an order or judgment was a legal bar to the granting of bail by another judge to persons entitled to it, without regard to the legality or illegality of such order. *Blossom, et al. ex parte* 10 L. C. J. 30, and 1 L. C. L. J. 88.

598.—But *held*, subsequently, on a second petition for *habeas corpus*, that such an order was no bar to the granting of bail by any competent court or judge because, under C. S. C. c. 102, s. 57, the courts are bound to grant bail in cases of misdemeanor. *Ib.* 10 L. C. J. 46 and 135, Q. B. 1865.

599.—A prisoner committed for trial on an accusation of arson may be admitted to bail. *Ex parte Onasakenrat*, 21 L. C. J. 219, 1877.

600.—The prisoner being confined in gaol upon a charge of arson, in setting fire to a dwelling-house while persons were inside, presented a petition for the benefit of the writ of *habeas corpus*, and to be admitted to bail, alleging that he had applied for his trial but had been refused at the last session of the Court of Queen's Bench, and that there was not sufficient evidence to warrant his detention,

Held, that, although a true bill had been found against him by the grand jury, he might be admitted to bail, inasmuch as the depositions against him were found to create a very slight supposition of his guilt. *Maguire ex parte*, 7 L. C. R. 57, S. C. 1857.

601.—When the circumstances of the case raised a presumption that the accused would appear to take his trial, and as the next term of court was distant, the prisoner accused of bigamy, was admitted to bail. *Ex parte Emond*, 11 Q. L. R. 248, Que.

602.—A prisoner in custody for grand larceny may be admitted to bail. *Rex* v. *Jones*, 4 O. S. 18.

603.—Where a person charged with felony had been admitted to bail upon an order of a judge, and an application was subsequently made to rescind such order, and to re-commit the prisoner, on the grounds that he had not been committed for trial at the time such order was granted, and that the bail put in was fictitious,

Held, that a judge had power to make the order asked for; but the order in this case was conditional upon the failure of the prisoner to find new sureties within a specified time. *Regina* v. *Mason*, 5 P. R. 125.

604.—A true bill was found against the prisoner at Quebec. The trial was deferred until the following term, and it was agreed that the prisoner should he bailed. He was allowed to go in search of his bail, but left the country; subsequently he returned, and was arrested. A subsequent application by him to be bailed was refused. *Ex parte Deenan*, 3 L. N. 195, 1880.

605.—Upon a charge of assault, or aggravated assault, there being doubts as to the law, the facts being disputed, the prisoner was admitted to bail pending application for his discharge, which was to be renewed in term. *In re McKinnon*, 2 L. J., N. S. 324, Ont.

606.—Although a statute may require the presence of three justices to convict of an offence, yet one has power to bail the offender; and a second arrest for the same charge, by the same complainant, before the time appointed for the hearing, is illegal. *King* v. *Orr*, 5 O. S. 724.

607.—The prisoner, who was charged, with others, with the crime of larceny, applied to be bailed, on the ground that, at a trial held before the court of quarter sessions, the jury had failed to agree, and had been discharged on account of the absence of an important witness for the prosecution. It was

Held, that the court could not decide whether the discharge of the jury was legal or not, and as the absent witness had evidently been tampered with, the application was refused. *Jones ex parte*, 3 L. N. 206, 1880.

608.—Persons accused of misdemeanor are not entitled to be liberated on bail if, in the opinion of the judge presiding, the evidence adduced be positive against

them, though two juries have been discharged because they could not agree upon a verdict, and in such case the court will order that the prisoners stand committed to gaol, without bail or mainprise, to be tried again at the next term, and not to be discharged without further orders from the court. *Regina* v. *Blossom, et al.*, 10 L. C. J. 29, Q. B. 1867.

609.—A female prisoner, charged with perjury, was admitted to bail under the following order: "That the prisoner, A. Johnson, do give bail to Our Lady the Queen in the sum of £50, and two sureties, each in the sum of £25, the said moneys to be levied of their goods and chattels, lands and tenements, to the use of our said Lady the Queen, her heirs and successors, if the said A. Johnson shall fail to appear to answer a charge of wilful and corrupt perjury, committed on the trial of one Thomas Welsh for robbery, and that in default of such bail, she be committed to the common jail of this district to be dealt with according to law." *Regina* v. *Johnson*, 8 L. C. J. 285, Q. B. 1857.

XXIII.—HABEAS CORPUS.

610.—Section 51 of the Supreme and Exchequer Court Act does not interfere with the inherent right which the Supreme Court of Canada in common with every Superior Court has incident to its jurisdiction, to enquire into and judge of the regularity or abuse of its process, and to quash a writ of *habeas corpus* and subsequent proceedings thereon when in the opinion of the court such writ has been improvidently issued by a judge of said court. The said section does not con-

stitute the individual judges of the Supreme Court separate and independent courts, nor confer on the judges a jurisdiction outside of and independent of the court, and obedience to a writ issued under said section cannot be enforced by the judge but by the court, which alone can issue an attachment for contempt in not obeying its process. FOURNIER and HENRY, JJ., dissenting.

Per STRONG, J.—The words of section 51 expressly giving an appeal where the writ of *habeas corpus* has been refused or the prisoner remanded, must be attributed to the excessive caution of the legislature to provide all due protection to the subject in the matter of personal liberty, and not to an intention to deprive the court of the right to entertain appeals from and revise and rescind orders made under the section.

The right to issue a writ of *habeas corpus* being limited by section 51 to "an enquiry into the cause of commitment in any criminal case under any Act of the Parliament of Canada" such writ cannot be issued in a case of murder, which is a case at common law. FOURNIER and HENRY, JJ., dissenting.

Per FOURNIER and HENRY, JJ., dissenting, the restriction so imposed by the section is merely intended to exclude any enquiry into the cause of commitment for the infraction of some provincial law; and the words "in any criminal case" were inserted to exclude the *habeas corpus* in civil matters; it is sufficient to give jurisdiction if the commitment be in virtue of an Act of the Parliament of Canada.

Query: Is section 51 *ultra vires*?

Semble, that where a judge in a province has the right to issue a writ of *habeas corpus*, returnable in term as

well as in vacation, a judge of the Supreme Court might make the writ he authorizes returnable in said court in term as well as immediately. FOURNIER and HENRY, JJ., dissenting.

An application to the court to quash a writ of *habeas corpus* as improvidently issued may be entertained in the absence of the prisoner. HENRY, J., dissenting.

After a conviction for a felony by a court having general jurisdiction over the offence charged, a writ of *habeas corpus* is an inappropriate remedy.

If the record of a superior court produced or an application for a writ of *habeas corpus* contains the recital of facts requisite to confer jurisdiction it is conclusive and cannot be contradicted by extrinsic evidence. HENRY, J., dissenting.

A return by the sheriff to the writ setting out such conviction and sentence and the affirmation thereof by the court of error is a good and sufficient return. If actually written by him or under his direction, the return need not be signed by the sheriff. HENRY, J., dissenting.

The Supreme Court of British Columbia is clothed with all the powers and jurisdiction, civil and criminal, necessary or essential to the full and perfect administration of justice, civil or criminal, in the province; powers as full and ample as those known to the common law and possessed by the superior courts in England.

The various statutes of British Columbia for the holding of courts of oyer and terminer and general gaol delivery, render unnecessary a commission to the presiding judge.

Per STRONG, J., the power of issuing a commission, if necessary, belonged to the Lieutenant-Governor of the province, HENRY, J., *contra*.

An order made pursuant to 32-33 Vict. c. 29, s. 11, (Ca.) directing a change of venue would be sufficient although containing no reference to any provision for expenses, when the indictment has been pleaded to and the trial proceeded with without objection, and, even in a court of error, there could be no valid objection to a conviction founded on such order.

Even if the writ of *habeas corpus* herein had been rightly issued, the prisoner, on the materials before the judge, was not entitled to his discharge, but should have been remanded. *Ex parte Sproule*, 12 S. C. Rep. 140.

611.—Application was made to the Chief Justice of the Supreme Court in Chambers on behalf of a person arrested on a warrant issued upon a conviction by a magistrate for a writ of *habeas corpus* and for a *certiorari* to bring up the proceedings before the magistrate, the application being based on the lack of evidence to support the conviction. The application was dismissed. On appeal to the full court,

Held, HENRY, J., dissenting, that the conviction being regular, made by a court in the unquestionable exercise of its authority and acting within its jurisdiction, the only objection being that the magistrate erred on the facts and that the evidence did not justify his conclusion as to the guilt of the prisoner, the Supreme Court could not go behind the conviction and inquire into the merits of the case by means of a writ of *habeas corpus*, and thus constitute itself a court of appeal from the magistrate's decision.

The only appellate power conferred on the court in

criminal cases is by the 49th section of the Supreme and Exchequer Court Act, and it could not have been the intention of the legislature, while limiting appeals in criminal cases of the highest importance, to impose on the court the duty of revisal in matters of fact of all the summary convictions before police or other magistrates throughout the Dominion.

Section 34 of the Supreme Court Amendment Act, 1876, does not in any case authorize the issue of a writ of *certiorari* to accompany a writ of *habeas corpus* granted by a judge of the Supreme Court in Chambers; and as the proceedings before the court on *habeas corpus* arising out of a criminal charge are only by way of appeal from the decision of such judge in chambers, the section does not authorize the court to issue a writ of *certiorari* in such proceedings; to do so would be to assume appellate jurisdiction over the inferior court.

Semble, *per* RITCHIE, C.J., that chapter 70 of the Revised Statutes of Ontario relating to *habeas corpus* does not apply to the Supreme Court of Canada. ***Ex parte Trepanier***, 12 S. C. R. 111.

612.—The prisoners were committed for trial on a charge of gambling on a railway train. On the case coming before the county judge for trial, an indictment was preferred, under 42 Vict., c. 44, s. 3 (D), for obtaining money by false pretences. The prisoners' counsel objected to the prisoners being tried on a different charge from that on which they had been committed. The objection was overruled, and the charge read over to the prisoners, and, on its being explained that they could be tried forthwith, or remain in custody until the next sittings of Oyer and Terminer, etc., they pleaded not guilty, and said they were ready for trial.

The case then proceeded, and the prisoners were convicted; no question being raised as to their having been tried without their consent, although their counsel took other objections to the proceedings. A writ of *habeas corpus* having been issued and the prisoners' discharge moved for, on the ground of the absence of such consent,

Held, that the motion must be refused.

Per WILSON, C.J.—It was unnecessary to decide whether the prisoners' remedy was by *habeas corpus* or writ of error, because, on the facts, they were not entitled to either remedy.

Per OSLER, J.—The prisoners having been imprisoned under the conviction of a court of record, an objection of error in the proceedings must be by writ of error; the writ of *habeas corpus* was therefore improvidently issued, and should be quashed. *Regina* v. *Goodman and Wilson*, 2 Ont. Rep. 468; 3 Ont. Rep. 18, Q. B.

613.—The judgment of a superior court of law will not be interfered with on the return to a writ of *habeas corpus*, and so a writ of *habeas corpus* in order to discharge prisoner from custody, on the ground that the prisoner was sentenced to a punishment not authorized by law, will be refused by the court of Queen's Bench. *Ex parte McGrath*. Judgment, September, 1875.—Ramsay, A. C., 188.

614.—A district magistrate, acting under the Speedy Trial Act, acts as a court of record for all the purposes of the trial, and the proceedings connected therewith or relating thereto, although he does not retain the record, but files it in the court of general sessions, are really before this court in the rural districts. Being a

court of record his judgment cannot be enquired of on *habeas corpus*. It may on writ of error, which the Court of Queen's Bench has, by statute, authority to grant, as also it has, as an incident of its general powers, the right to issue a *certiorari* to bring up the record. *Ex parte O'Kane*.—Ramsay, A.C., 188.

615.—29-30 Vict. c. 45, had in view and recognizes the right of every man committed on a criminal charge to have the opinion of the superior courts upon the cause of his commitment by an inferior jurisdiction. *Regina* v. *Mosier*, 4 P. R. 64.

616.—A writ of *habeas corpus* should not issue where the accused is in custody pending a preliminary investigation before a magistrate during a remand to enable the prosecution to supply evidence in support of the charge. *Regina* v. *Cox*, 8 Can. Law Times, 350; 16 O. R. 228.

617.—When a writ of *habeas corpus* has been refused by the Court of Queen's Bench in term because of no valid grounds being set up by the petitioner for his discharge, he is not precluded from presenting a new petition. *Ex parte Williams*, M. judgment, 18 March, 1875 —Ramsay, A.C., 187.

618.—A writ of *habeas corpus* will be refused if applied for so late in the term that it could not be disposed of in the term. *Ex parte Franklin*.—Ramsay, A.C., 187.

619.—An affidavit in support of an application for a writ of *habeas corpus* stating that in so far as deponent knows the facts they are true, is valueless. And if on the return to a writ of *habeas corpus* it appears that the party having the custody of the person for whom the petition was presented is the person to whom the

writ is addressed, the return will be considered insufficient. *Ex parte McCarthy.*—Ramsay, A.C., 187, 319.

620.—On a petition for *habeas corpus* complaining of an illegal commitment, there should be a copy of the commitment, or an affidavit that it was applied for and refused. *Ex parte Pollock*, M. Judgment, November, 1881.—Ramsay, A.C., 319.

621.—Prisoner was arrested in Quebec on the warrant of M. C. in his quality of justice of the peace for the province, charging certain persons, among whom the name of the prisoner was not included, with bringing and having in their possession in Canada, money which had been feloniously stolen and obtained by them in New York. On a petition for *habeas corpus*, the prisoner swore that he was first arrested on a steamship, in the harbor of Quebec, and asked to look at the warrant. On doing so he found his name was not included in it and informed the constables. On looking over his baggage and papers they became convinced that that was the case, and liberated him with an apology. Next morning they returned and on the strength of a telegram which they produced, again arrested him on the same warrant. The petition for *habeas corpus* on this ground was granted, but as soon as the prisoner was liberated he was again arrested on a new warrant issued in Montreal and endorsed by the judge of sessions in Quebec. On a second petition for *habeas corpus*,

Held, that under the Consolidated Statute of Lower Canada, c. 95, s. 11. (1) that after having been liberated under the Act of *habeas corpus*, a prisoner could not be arrested again on a new warrant, charging him with the same offence. *Eno ex parte* 10 Q. L. R. 165.

XXIV.—EXTRADITION. (R. S. c. 142.)

622.—*Held*, that the Ashburton Treaty contains the whole of the law of surrender as between Canada and the United States; the 3 Will IV. c. 6, being superseded by it, and the Imperial Act 6-7 Vict. c. 76, and Provincial Statute 12 Vict. c. 19; though in relation to other foreign powers, with whom no treaty or conventional arrangement existed, the 3 Will. IV. c. 6 is still in force. *Regina* v. *Tubbee*, 1 P. R. 98, Ont.

623.—*Quære*, how far the United States, Lower Canada, or England, would respect the 3 Will. IV. c. 6, if a fugitive surrendered by Upper Canada to a foreign power were taken through those countries. *Ib.*

624.—Though the surrender must be by the executive government, yet a party committed under a magistrate's warrant may apply for a *habeas corpus*, and the court or judge may determine whether the case be within the treaty. *Ib.*

625.—The 40 Vict. c. 25, is not in force, but the law and practice relating to the extradition of fugitive criminals between the United States and Canada, is to be found in the Ashburton Treaty, Art. X., the 31 Vict. c. 94; 33 Vict. c. 25; and the Imp. Acts, 33-34 Vict. c. 52, and 36-37 Vict. c. 60.

Re Williams, 7 P. R. 275, No. 626, *post*, approved of.

On an application for the discharge of a prisoner committed for extradition under an order of the county judge of Kent, on a charge of murder,

Per WILSON, C.J., that under the above Acts, and 32-33 Vict. c. 30, ss. 4, 5, a certified copy of an indictment for murder found by the grand jury of Erie County, State of New York, United States, was of itself sufficient evidence to justify the committal of such prisoner for extradition.

Per OSLER, J., that such indictment was not evidence for any purpose.

Per WILSON, C.J., and OSLER, J., that the other evidence taken before the county judge, documentary and *viva voce*, was insufficient, as it showed at most that the prisoner was an accessory after the fact, which did not come within the treaty.

Per GALT, J., that if the case had turned on the indictment alone, he would have hesitated to accept it as conclusive against the accused; but that the other evidence, together with the indictment, was sufficient to warrant his extradition.

The application was therefore refused. *Regina* v. *Browne*, 31 C. P.; 17 L. J. N. S.

626.—The only existing law as to extradition of criminals between the United States and Canada, is the Imperial Act of 1870 (33-34 Vict. c. 25 (D). The Canadian Extradition Act of 1877 (40 Vict. c. 25 (D), does not apply to criminals from the United States, as the operation of the Imperial Act, 1870, has not "ceased or been suspended within Canada." Proceedings taken for the extradition of the prisoner under 40 Vict. c. 25 (D), and a warrant committing him under that Act, were therefore set aside, and the prisoner discharged. *In re Williams*, 7 P. R. 275, Ont.

627.—On a demand for *habeas corpus* by a person committed for extradition on a charge of passing counterfeit money,

Held, that since the Imperial order in council of 28th December, 1882, published in the *Canada Gazette*, of 3rd March, 1883, the operation of the Imperial Extradition Act of 1870 has been suspended in Canada, *quoad* the extradition of fugitive offenders from the United States, and the Dominion Act, 40 Vict. c. 25, is applicable in such case to the extent at least of the extradition arrangements in force with that country. *Phelan ex parte*, 6 L. N. 261, Que.; R. S. c. 142.

628.—It is not necessary to the jurisdiction of a magistrate in Canada, acting under the treaty and statutes, either that a charge should be first laid in the United States, that a requisition should be first made by the Government of the United States upon the Canadian Government, or that the Governor-General should first issue his warrant requiring magistrates to aid in the arrest of the fugitive; in other words, the charge may be originated before the magistrate in Canada. *Ib.*

629.—The fact that the person is charged with piracy committed in the foreign country, ought not to prevent the Government of the country where the fugitive is found from surrendering him on the charge of robbery made and proved in the latter country. *Ib.*

630.—Remarks on the propriety of giving a liberal interpretation to the extradition treaty, and the inadequacy of its provisions to meet the class of felonies of most common occurrence in both countries. *Regina* v. *Morton, et al.*, 19 C. P. 9, Ont.

631.—An alleged irregularity in the proceedings for his

arrest cannot, on an application for *habeas corpus*, avail a prisoner committed for extradition. It is sufficient that, being under arrest before proper authority, a case has been made out against him to justify his commitment. *Phelan ex parte*, 6 L. N. 261.

632.—A magistrate, acting under the treaty and statute, after issue of a writ of *habeas corpus*, but before its return, may deliver to the gaoler a second or amended warrant, which, if returned in obedience to the writ, must be looked at by the court or judge before whom the prisoner is brought. *In re Asher Warner*, 1 L. J. N. S. 16.

633.—In extradition cases the forms and technicalities with which the statute surrounds the production of affidavit evidence must be strictly complied with; and therefore,

Held, that depositions taken in the United States cannot be read unless certified under the hand of the magistrate who issued the original warrant as being copies of the depositions upon which such warrant issued, although attested by the party producing them to be such true copies; but,

Semble, the prisoner might be remanded to enable properly certified copies to be produced. *In re Lewis*, 6 P. R. 236.

634.—When a prisoner was brought before the court upon a writ of *habeas corpus* under one statute, the warrant of commitment upon which he was detained appearing on its face to be defective, it was held that the court had no authority to remand him, such power being possessed by the court at common law only, and the prisoner not being charged with any offence for which he could be tried in this province. *In re Anderson*, 11 C. P. 9.

635.—It is not necessary under the Extradition Treaty and Act, 31 Vict. c. 94 (D), that an original warrant should have been granted in the United States for the apprehension in this country of the person accused, to enable proceedings to be effectually taken against him in this province for an offence within the treaty. *In re Caldwell*, 5 P. R. 217.

636.—Where the crime comes within the treaty, it is immaterial whether it is, according to the laws of the United States, only a misdemeanor or a felony. *In re Caldwell*, 5 P. R. 217.

637.—Where a prisoner in custody under the Ashburton Treaty obtained a *habeas corpus* and *certiorari* for his discharge, it was held that the argument as to the regularity or irregularity of the initiatory proceedings, such as information, warrant, etc., was a matter of no consequence, the material question being whether, being in custody, there was a sufficient case made out to justify the commitment for the crime charged. It was also

Held, that certified copies of depositions sworn in the United States after proceedings had been initiated in Canada, and after the arrest in Canada, were admissible evidence before the police magistrate. *Ex parte Martin*, 4 L. J., N. S. 198.

638.—The authority of the magistrate need not be shown on the face of a warrant of commitment, and where the crime has been committed in a foreign country, and the committing magistrate has (as McM. had in this case,) jurisdiction in every county in Ontario, the warrant is not bad, though dated at Toronto, the county mentioned in the margin being York, but directed to the constables, etc., of the county of Essex,

and though signed by the police magistrate as such for the county of Essex. *Regina* v. *Reno, et al.*, 4 P. R. 281.

639.—On a petition for *habeas corpus* by a person committed for extradition to the United States, it was

Held, that the Act requires merely that the fugitive be charged with having committed, within the foreign jurisdiction, one of the crimes enumerated in the treaty, and that the evidence of guilt be such as, according to the laws of this country, would justify his apprehension and trial, if the crime had been committed here; and where the authorities in the country where the crime was committed have declared by the issue of a warrant for the apprehension of an offender that the acts complained of constitute an extradition offence, according to their laws, it remains for the authorities here only to examine whether the same acts if committed here would justify the arrest and trial of the accused for the same offence. *Ex parte Worms*, 22 L. C. J. 109, Que.

And it is not necessary that the depositions be taken before the magistrate who issued the original warrant. *Ib.*

An error in the warrant of arrest in an extradition case does not affect the warrant of commitment, if the latter be in accordance with the charge and the evidence adduced. *Ib.*

The expressions "forgery" and "utterance of forged paper" in the treaty include every crime falling under that description, whether it amounts to a felony or to a misdemeanor only. *Ib.*

The Imperial Act of 1870 applies to Canada, and is not inconsistent with section 132 of the British North America Act. *Ib.*

640.—The prisoner will not be liberated because the warrant of imprisonment does not contain the word "feloniously," as found in the warrant of arrest issued in the United States, nor because the judge who issued the warrant of imprisonment inserted the words "well knowing the same to be forged," which were not found in the accusation. *Ex parte Worms*, 7 R. L. 320, Que.

Depositions taken at Washington before a justice of the peace, and certified before another justice of the peace, who issued the first writ in the United States, may make proof against the prisoner. *Ib.*

A warrant of the Governor-General is not necessary to authorize the arrest. *Ib.*

641.—Application for the discharge on *habeas corpus* of prisoners charged with robbery committed in the United States, and committed at Sandwich for extradition by Mr. McMicken, a police magistrate appointed under 28 Vict. c. 20. The prisoners, it seemed, had been previously arrested at Toronto on the same charge, and been discharged by the local police magistrate, after a lengthened investigation before him,

Held, that this did not prevent another duly qualified officer from entertaining the charge against them on the same or on fresh materials,

Held, also, that section 373 of 29 Vict. c. 51, did not preclude M. from taking the information and issuing his warrant in Toronto, where there was already a police magistrate; for that the words of the text merely excluded him from jurisdiction there in local cases,

Held, also, that the appointment of M. might well have been made under 28 Vict. c. 20, for any one of or for all the counties of Upper Canada, including Toronto, and his powers made the same as a police

magistrate in cities, except as regarded purely municipal matters; and that this Act was continued by 31 Vict. c. 17, s. 4 (O.); but that, as nothing was suggested impugning his authority to act, the warrant must be treated as executed by an officer possessing such authority,

Held, also, that the depositions on which the warrant issued in the United States after the arrest in Canada were properly admitted here as evidence of criminality, their admission being within both the letter and spirit of the 31 Vict. c. 94. *Regina* v. *Morton, et al.*, 19 C. P. 10.

642.—A warrant of commitment for extradition should in its terms conform to the requirements of section 1, 31 Vict. (Can.), c. 94, in directing the person accused to be committed until surrendered on the requisition of the proper authority, or duly discharged according to law. The judge is required to decide whether he deems the evidence adduced before him sufficient to justify the apprehension and commitment for trial of the person accused if the crime had been committed in Canada. If he finds in the affirmative he should so state it in his commitment, and certify the fact to the proper executive authority. His functions do not extend to determining whether the accused should be extradited; that rests with the Governor-General after the evidence has been reported to him. If the judge fails to state in the commitment that he deems the evidence sufficient, the commitment will be held defective and insufficient.

Where a person charged with a crime is committed in pursuance of a special authority, the commitment must be special, and must exactly pursue that authority. If the commitment does not on its face show

that the case of the accused falls within the terms of the Extradition Treaty and the statutes authorizing the proceedings in extradition, or fails to contain the proper statutory conclusions, no sufficient cause of detention will have been shown, and he will be liberated on *habeas corpus*. *Ex parte, Zink*, 6 Q. L. R. 260.

643.—In extradition proceedings the information charged that the informant "hath just cause to suspect and believe, and doth suspect and believe that H. L. Lee," the prisoner, "is accused of the crime of forgery," etc., "for that the said H. L. Lee," etc., did feloniously forge "some 78 orders for the payment of money. The 79th charge was, that the said H. L. Lee, at the aforesaid several times, etc., did feloniously utter, knowing the same to be forged, the said several orders, etc.

Held, sufficient, for that the information charged that the prisoner "did feloniously forge," etc.; and the allegation that the informant believed that the prisoner "is accused," etc., might be treated as surplusage; but even if objectionable at common law, it was good under section 11 of 32-33 Vict. c. 30 (D), and 32-33 Vict. c. 29, s. 27 (D); and, moreover, the 79th charge was free from objection,

Held, also, that in these proceedings, a plea to the information is not required.

Certain foreign depositions were sworn to before E. G., a justice of the peace for Cincinnati township, Hamilton county, Ohio. A certificate was attached, commencing, "I, Daniel J. Dalton, clerk of the court of common pleas for said Hamilton county," certifying as to the signature of E. G., and that he was a duly qualified justice of the peace for said county, and entitled to take depositions of witnesses, etc.; and concluded, "In testimony whereof I have hereunto set my hand

and affixed the seal of the said court at Cincinnati, etc. D. J. Dalton; Richard C. Rohner, deputy." To this was attached the certificate of the governor of the state of Ohio, under the great seal of the state, certifying that D. J. Dalton, "whose genuine signature and seal are affixed to the annexed attestation, was at the date thereof clerk of the said court," etc.; that "he is the proper person to make such attestation, which is in due form, and that his official acts are entitled to full faith and credit."

The court, without specially pronouncing on the question, refused to allow an objection, which, as a matter of fact was not taken, to the sufficiency of the depositions under 45 Vict. c. 25, s. 9, s-s. 2 a (D), for the official seal of D. J. Dalton was attached, and the governor certified that he was the proper person to make such attestation; and also there was *viva voce* evidence given in proof thereof, so that the "papers were authenticated by the oath of some witness" under sub-section (B).

Per WILSON, C.J.—In these proceedings, the evidence of interested parties need not be corroborated. *In re H. L. Lee*, 5 Ont. Rep. 583, Q. B.

644.—The 10th article of the Treaty of Washington between Great Britain and the United States provides for the delivery up to justice of persons charged with certain crimes in one of those countries who may be found in the territories of the other, and directs what shall be sufficient evidence of criminality to justify the issuance of a warrant for the surrender of the fugitive.

The Canadian Act, 40 Vict. c. 25, s. 23, enacts that when any person is surrendered by a foreign state in pursuance of any arrangement, he shall not, until he has been restored to, or had an opportunity of return-

ing to the foreign state, be subject, in contravention of any terms of the arrangement, to any prosecution in Canada, for any other offence committed prior to his surrender, for which he should not, under the arrangement, be prosecuted. A person imprisoned here on a charge of having committed arson (an extraditable crime), escaped and fled to the States, and on requisition made to the Government of that country, under the Washington Treaty, was surrendered, the warrant of surrender stating he was to be tried for the crime of which he was so accused. He was tried and convicted here of the crime charged, and while undergoing sentence was tried for breach of prison (not an extraditable offence,) committed before he escaped to the States,

Held, per ALLEN, C.J., FRASER and TUCK, JJ., (WETMORE, PALMER and KING, dissenting), that there being no provision in the treaty on the subject, such trial was not in contravention of any terms of the arrangement for the surrender of fugitives between the two nations; and that the warrant stating that the fugitive was surrendered to be tried for the crime of which he was accused was the act of the United States' authorities only, and was not an arrangement within the meaning of the Canadian Act.

Per WETMORE, PALMER and KING, JJ.—The trial of the accused for breach of prison was in contravention of the fair construction of the Washington Treaty as it had always been claimed by Great Britain, and was also contrary to the express conditions of the warrant of surrender. *Regina* v. *Waddell*, 6 Can. Law Times, 598, N. B.; R. S. c. 142, s. 23.

645.—When surrendered to the Government of the country from which he fled, the Government of the latter are

bound to try him for the offence for which he is surrendered, and not for any other or different offence. *Re Burley*, 1 L. J., N. S. 16; R. S. c. 142, s. 23.

646.—Statements on oath sworn before a judge of a county court of Illinois, whose signature is certified by the clerk of the court under the seal of the court, are admissible as evidence in extradition proceedings, and it is immaterial whether the witness was sworn before his evidence was taken down, as in a deposition, or after its completion, as in an affidavit.

A committal for extradition for "forgery" is sufficient without further particulars as to the nature of the crime.

It is not necessary to obtain a warrant prior to arrest in cases under the Extradition Act.

The filing up of drafts signed in blank without authority and for fraudulent purposes is forgery.

Upon *habeas corpus*, the court should see that the facts alleged constitute an extraditable offence, and it should examine the evidence to see whether there is such proof as would warrant a grand jury to find a true bill, or a magistrate to commit for trial.

A person committed for extradition but not surrendered is entitled to a *habeas corpus* before the full court.

It is not necessary to prove a demand of surrender from a foreign government in proceedings for a committal.

A *prima facie* case may be made out by circumstantial evidence. *In re Hoke*, 15 R. L. 92, 99, Que.

647.—The judgment of the Court of Common Pleas, 31 C. P. 484, affirmed, but on different grounds.

An accessory before the fact is liable to extradition, but an accessory after the fact is not.

Upon the application to the county judge of Kent for extradition of the defendant, who was under indictment in the State of New York for murder, the coroner, who had held the inquest there, proved by oral testimony before the county judge here, the original depositions taken on oath before him, and also copies of the depositions certified by him to be true copies,

Held, that, under section 14 of the Imperial Extradition Act of 1870, the original depositions were properly received, as the power given therein to use the original depositions is not qualified by section 2 of 31 Vict. c. 94 (D); and that the evidence disclosed therein was sufficient to warrant the extradition of the prisoner as an accessory before the fact,

Held, also that the foreign indictment was not admissible as evidence against the accused.

It was shown that the only warrant issued in this case was the warrant issued by the district attorney (after the grand jury had found a true bill for murder) which did not profess to be issued upon the depositions, nor was it proved upon what evidence the bill was found.

Semble, *per* PATTERSON, J.A., that the right given by section 14 above referred to, to use copies of depositions is confined by the effect of section 2 of 31 Vict. c. 94, to those cases in which a warrant has been issued in the United States upon the depositions. *Regina* v. *Browne*, 6 Ap. R. 386.

648.—The adjudication of the committing magistrate as to the sufficiency of the evidence for committal may be by way of recital on the warrant of commitment. *In re Burley*, 1 L. J. N. S. 34.

649.—If the evidence present several views, on any one of which there may be a conviction, if adopted by the jury, the court will direct extradition. *Regina* v. *Gould*, 20 C. P. 154; R. S. c. 142, s. 11.

650.—Where the facts in evidence, though sufficient to warrant extradition if deposed to by witnesses who could really testify to the occurrence, were sworn to from information only, the prisoner was discharged. *In re Parker*, 9 P. R. 332.

651.—*Quære*, can a committing magistrate detain a prisoner upon evidence amounting only to a ground of suspicion, for the purpose of other evidence being imported into the case so as to bring it within the treaty. *In re Kermott*, 1 C. L. Chamb. 253.

652.—Where the accused, on his examination before the magistrate, admitted the acts charged, which *prima facie* amounted to robbery (one of the crimes enumerated in the treaty), and alleged, by way of defence, matter of excuse which was of an equivocal character,

Held, that the magistrate could not try the case, but was bound to commit the accused for trial before the tribunals of the foreign country. *In re Burley*, 1 L. J. N. S. 34.

653.—If the magistrate, sitting on a similar charge, if committed in Canada, would commit for trial, he is equally bound to commit for trial in the foreign country when the offence, if any, has been committed there. *Ib.*, and *Ex parte Lamirande*, 10 L. C. J. 280.

654.—The magistrate cannot weigh conflicting evidence to try whether the prisoner is guilty of the crime charged. *Re Burley*, 1 L. J. N. S. 20, Ont.

655.—Under 31 Vict. c. 94 (D), the last Extradition Act, all that the committing magistrate or the court or a judge has to do is to determine whether the evidence of criminality would, according to the laws of Ontario, justify the apprehension and committal for trial of the accused if the crime had been committed therein. *Ex parte Reno, et al*, 4 P. R. 281, Ont.; R. S. c. 142, s. 11.

Such decision, if adverse to the prisoner, does not conclude him; as the question of extradition or discharge exclusively rests with the Governor-General. *Ib.*

Evidence offered to a magistrate by a prisoner on an examination of this kind, by way of answer to a strong *prima facie* case, may perhaps properly be taken, but would not justify the magistrate in discharging the prisoner.

And, *quære*, whether it was not the intention of 31 Vict. c. 94, to transfer to the Governor exclusively the consideration of all the evidence, that he might determine whether the prisoner should be delivered up. *Ib.*

Under the circumstances of this case, it was held that there was sufficient *prima facie* evidence of the criminality of the prisoners to warrant a refusal to discharge them, and that there was evidence to go to a jury to lead to the conclusion that the intent of the prisoners was at the time of shooting to commit a murder. *Ib.*

656.—It is in the discretion of the magistrate investigating into a charge under the treaty against a person accused of one of the crimes mentioned in the treaty, to receive evidence for the defence. *In re Burley*, 1 L. J. N. S. 20, Ont.

657.—The magistrate should not go beyond a bare enquiry as to the *prima facie* evidence of criminality of the accused, and should not enquire into matters of defence which do not affect such criminality. *In re Caldwell*, 5 P. R. 217.

The judge or magistrate has no right to hear evidence for the accused, though he may in his discretion hear any evidence tending to show that the offence is of a political nature, or one not comprised in the treaty, or that the accuser was a person who should not be believed under oath, or that the demand was the result of a conspiracy. *Ex parte Rosenbaum*, 20 L. C. J. 165, Que.

658.—Original depositions are admissible in proceedings under the Imperial Act 6-7 Vict. c. 34, and can be used in evidence against a prisoner upon proof of their identity, and of their being properly taken, which in this case, upon the evidence set out, was held to be already shown. *Regina* v. *Matthew*, 1 P. R. 199, Ont.

659.—*Held*, also, that they may be clearly proved by the *viva voce* evidence of a witness competent to swear to the facts, that copies of the depositions can be proved by such testimony, as well as by the certificate identifying the copies, as copies of the original documents may be supplemented by *viva voce* evidence that the originals referred to in the certificate were the originals upon which the warrant issued. *Ib*

660.—Copies of the indictment and of true bills found by the grand jury of the State of New York cannot be admitted in Canada as *prima facie* proof of the offence on a demand for extradition. *Eno ex parte*, 10 Q. L. R. 194: *Ex parte Rosenbaum*, 18 L. C. J. 200.

661.—Under 31 Vict. c. 94, the depositions must be those upon which the original warrant was granted in the United States, certified under the hand of the person issuing, and not depositions taken subsequently to the issue of the original warrant, and without any apparent connection therewith. *Regina* v. *Robinson*, 5 P. R. 189.

662.—An affidavit sworn to before a commissioner of the United States, proved to be a magistrate having authority in the matter according to the law where taken, may be received, if properly proved, as evidence against the prisoner on proceedings for extradition; and provided there has been adduced legal evidence applicable to the case, and prisoner has thereon been committed for extradition, a judge on an application for *habeas corpus* will not be disposed to weigh or appreciate that evidence with a view of giving the prisoner the benefit of a doubt as to its preponderance. *Phelan ex parte*, 6 L. N. 261, Q. B. 1883, Que.

663.—The evidence of accomplices is sufficient to establish a charge for the purposes of extradition. *In re Caldwell*, 5 P. R. 217.

664.—*Per* RICHARDS, C.J., the judges of the superior courts in the country where the fugitive is found may, on a writ of *habeas corpus* and *certiorari*, consider if there was sufficient evidence before the committing magistrate to justify the committal, and so may review the decision of the magistrate on the evidence.

Sed, quære, per HAGARTY and JOHN WILSON, JJ., *Re Burley*, 1 L. J. N. S. 34; *Re Warner*, 1 L. J. N. S. 16, Ont.

665.—The duty of the court or a judge, on a *habeas corpus*, is to determine on the legal sufficiency of the commitment, and to review the magistrate's decision as to there being sufficient evidence of criminality. *Regina* v. *Reno*, 4 P. R. 281, Ont.

666.—A judge in chambers has power to review and decide on the sufficiency of the evidence returned by the committing magistrate, or, if necessary, to hear further testimony. *Regina* v. *Tubbee*, 1 P. R. 98, Ont.

667.—The prisoner, who had been committed for extradition, was charged with assault with intent to commit murder, in that he had opened a railway switch with intent to cause a collision, whereby two trains did come into collision, causing a severe injury to a person on one of them,

Held, that this was not an "assault" within the statute. *In re Lewis*, 6 P. R. 236, Ont. See *Regina* v. *Bonter*, 30 C. P. 19; *Regina* v. *McDonald*, 30 C. P. 21, note, Ont.

668.—A., being a slave in the State of Missouri, belonging to one M., had left his owner's house with the intention of escaping. Being about thirty miles from his home, he met with D., a planter, working in the field with his negroes, who told A. that as he had not a pass he could not allow him to proceed, but that he must remain until after dinner, when he, D., would go with him to the adjoining plantation, where A. had told him that he was going. As they were walking towards D.'s house, A. ran off, and D. ordered his slaves, four in number, to take him. During the pursuit D., who had only a small stick in his hand, met A., and was about to take hold of him, when A. stabbed him with a knife, and as D. turned and fell he

stabbed him again. D. soon afterwards died of his wounds. By the law of Missouri any person may apprehend a negro suspected of being a runaway slave, and take him before a justice of the peace; any slave found more than twenty miles from his home is declared a runaway, and a reward is given to whoever shall apprehend and return him to his master. A. having made his escape to this province was arrested here upon a charge of murder, and the justice before whom he was brought having committed him, he was brought up in this court on a *habeas corpus*, and the evidence returned under a *certiorari*. It was contended that as A. acted only in self-defence of his liberty, there was no evidence upon which to found a charge of murder if the alleged offence had been committed here, and that he could not be demanded by the treaty,

Held, that, under the Ashburton Treaty, and our statute for giving effect to it, C. S. C. c. 89, the prisoner was liable to be surrendered.

McLean, J., dissenting, and holding that the information, warrant of commitment, and evidence (to which no objection was taken on argument) were insufficient; that if the charge had been clearly made out, the case was not within the treaty; and that the prisoner, therefore, was entitled to his discharge. *In re Anderson*, 20 Q. B. 124. See 11 C. P. 9.

669.—A warrant charging that the prisoners "did feloniously shoot at, etc., with intent, etc., to kill and murder," sufficiently charged an "assault with intent to commit murder," the words used in the Ashburton Treaty and Statute. *Regina* v. *Reno, et al.*, 4 P. R. 281.

670.—A warrant of commitment issued by a magistrate under the Ashburton Treaty and our statute, which used the words "did wilfully, maliciously, and feloniously stab and kill," and omitted the words "murder" and "with malice aforethought," and concluded by instructing the gaoler to "there safely keep him, the prisoner, until he shall be thence delivered by due course of law," did not come within the provisions of the treaty or statute, and was consequently defective. *In re Anderson*, 11 C. P. 9.

671.—Burglary is not an offence within the treaty or the statutes passed to give effect to it. *In re Beebe*, 3 P. R. 273, Ont.

672.—A British subject committing one of the crimes enumerated in the treaty within the jurisdiction of the United States, and afterwards fleeing to Canada is subject to the provisions of the treaty, which provides for the surrender of "all persons" who, being charged, etc. *In re Burley*, 1 L. J. N. S. 34, Ont.

673.—Lawful acts of war against a belligerent cannot be either commenced or concluded in a neutral territory. *Ib.*

674.—A person was arrested here for having committed in the United States the crime of forgery, by forging, coining, etc., spurious silver coin, etc.,

Held, that the offence, as above charged, did not constitute the crime of "forgery," within the meaning of the Extradition Treaty or Act. Definition of the term "forgery" considered. *In re Smith*, 4 P. R. 215.

675.—*Held*, *per* SULLIVAN, J., that upon the facts set forth in the judgment, the prisoner, who had been committed for extradition by the mayor of Toronto upon

an alleged crime of forgery, had been committed upon insufficient evidence, and must be discharged. *In re Kermott*, 1 C. L. Chamb. 253, Ont.

676.—A person convicted of forgery, or uttering forged papers in the United States, who escaped to Canada after verdict, but before judgment, is liable to be delivered over. *In re Warner*, 1 L. J. N. S. 16, Ont.

677.—On a demand for extradition, the warrant was in the following words:—That J. C. E., late of New York, in the State of New York, one of the United States of America, is accused of the crime of forgery and of the felonious utterance of a forged authority and order for the payment of money, within the jurisdiction of the State of New York, one of the United States of America, to wit, for that he, the said J. C. E., on the seventeenth day of January, in the year of Our Lord one thousand eight hundred and eighty-four, at the said city of New York, with intent to defraud and with intent to conceal a misappropriation of money, feloniously did draw, make and sign a certain order and authority for the payment of money, commonly called a cheque, dated at New York aforesaid, the day and year last aforesaid, for the sum of one hundred and twenty-five thousand dollars for and on account of the Second National Bank of the city of New York, and falsely pretending to so draw, make and sign said cheque as president of said bank, the whole without lawful authority or excuse. And further that the said J. C. E. afterwards, to wit, at the said city of New York, on the day and year last aforesaid, feloniously did offer, utter and dispose of and put off a certain order and authority for the payment of money, commonly called a cheque, dated at New York aforesaid, on the day and year last aforesaid, for the sum of $125,000, with

intent to defraud, drawn, made and signed for and on account of the said Second National Bank, of the city of New York, by J. C. E., who falsely pretended so to draw, make and sign said cheque, as president of the bank, the whole without lawful authority or excuse, and with intent to conceal a misappropriation of said last-mentioned sum, delivered the said bank cheque to G. and R., the payees therein named, from whom he obtained thereby money, value or credit in the sum of $125,000, named in the said bank cheque, and who thereupon endorsed the said bank cheque, and by means thereof, thereupon, at said city of New York, obtained from said Second National Bank the sum of $125,000, named in the said bank cheque, and thereupon J. C. E., with the intent to defraud and to conceal the said misappropriation of the money of the said Second National Bank, did make and cause to be made false entries in the accounts and books of account of said Second National Bank, whereby it was made to appear that the said sum of $125,000, had been loaned or advanced by said Second National Bank to said G. & R. and F. S. S., whereas in truth no loan or advance has been made to them or either of them by said Second National Bank, but the said sum of money had been misappropriated by said J. C. E., and did with like intent to defraud and conceal said misappropriation of money, wilfully omit to make true entries of the said bank cheque, or of the said sum of money for which said bank cheque was so drawn, in the accounts or book of account of the said Second National Bank, kept by him or under his direction, he, the said J. C. E., well knowing the said last-mentioned cheque to have been so drawn, made and signed,

Held, maintaining the petition for *habeas corpus*, and

dismissing the demand for extradition, that when the demand for extradition is for forgery, the offence must be that recognized as forgery by the Imperial Extradition Act of 1842; that according to that Act forgery is the making or uttering of writing so as to make the writing purport to be the act of some other person, which it is not, and not the making of an instrument which purports to be what it really is, but which contains false statements, and therefore false entries in the books of a bank by its cashier, do not constitute the offence of forgery according to the Extradition Act of 1842. *Eno ex parte*, 10 Q. L. R. 194, Que.

678.—The petitioner had been arrested in Quebec on the 16th June, 1884, on a warrant of arrest under the Extradition Act of 1887, for an alleged forgery, and applied to be liberated on the ground that he was not guilty of any offence for which his extradition might be demanded. The proof established that the accused had signed as president of the Second National Bank eight cheques for amounts varying from $95,000 to $200,000, and bearing various dates from 25th September, 1883, to 13th May, 1884. None of these cheques were given for the legitimate business of the bank, but were for the benefit of the accused, who made false entries in the books of the bank and issued "slips" and "tickets" for the bank's employees in order to conceal his defalcations. Moreover, the bank was to the knowledge of E. in an insolvent condition when these cheques were given, and in the evening of the 13th of May, 1884, E.'s resignation as president was handed to the directors, the last of the cheques in question having been drawn by him on that day and paid before three o'clock by the bank. In addition to this evidence the prosecution produced true copies of

five indictments of the grand jury of the city and district of New York, returning true bills of forgeries in the first, second and third degrees under the laws of New York. It was pretended by the prosecution that these indictments were admissible as evidence as "statements on oath" under the Extradition Act of 1877, section 9 (1),

Held, that these indictments could not be accepted as *prima facie* evidence of the commission of an extraditable offence, and that the acts proved in the present case did not constitute a forgery. *Eno ex parte*, 7 L. N. 360, S C, 1874, Que.

679.—The prisoner was the superintendent of an almshouse in the city of Philadelphia, N. S., which was supported by the city. Certain persons furnished goods to the almshouse and were entitled to receive warrants for the price thereof. These warrants duly prepared and signed in favour of the parties entitled, were in the hands of W., the secretary of the almshouse, to be delivered to the proper parties on their signing the counterfoils of the warrants. The prisoner obtained possession of the warrants by falsely representing to W. that he had authority to sign the names of the respective parties entitled, and by signing such names on the counterfoils. The warrants were then cashed at the city treasury.

The district attorney of Philadelphia, who was examined before the county judge, swore that, according to the criminal code of Pennsylvania, established by statute there, which was produced, and at common law, as there interpreted, the facts shown made out the crime of forgery,

Held, CAMERON, J., dissenting, that the offence

amounted to forgery, within the meaning of the Ashburton Treaty, and that the prisoner should be remanded for extradition.

Per HAGARTY, C.J.—The evidence disclosed a *prima facie* case of forgery sufficient to warrant the commitment for trial of the prisoner if the crime had been committed in Canada.

Per ARMOUR, J.—The treaty was not intended to include the crime of forgery only where that crime is common to both countries. In framing the treaty the high contracting parties were dealing both with the present and future, and the general term forgery should include everything in the nature of forgery, and which hereafter might be held to be forgery at common law by the decision of the courts, or might be declared to be forgery by the statute law.

Per CAMERON, J.—The statutory crime of forgery is the only kind of forgery within the treaty, but it was not intended to embrace any act or offence made forgery by any statutory law of either nation passed after the execution of the treaty. The offence in this case was the obtaining a cheque by falsely pretending that the prisoner had authority to sign the counterfoil, and was not within the treaty,

Held, also, that the original warrant, within the meaning of 31 Vict. c. 94, s. 2 (D), is not the first of two or more consecutive warrants, but is any warrant issued in the United States of America. *Re Ellis P. Phipps*, 1 Ont Rep. 586, Q. B.

680.—A statement of account such as is received by a bank from other banks having business connections with it and containing an acknowledgment of the receipt of money to be accounted for is an "accountable receipt"

within the meaning of R. S. C. c. 165, s. 29, and the fraudulent alteration thereof is a forgery.

A confession as to alteration of accounts made by an officer of a bank after his connection therewith has ceased, to a fellow-employee (no director being present) is not made to a person in authority; and where such confession is made without any inducement being held out, and after the accused was cautioned against saying anything he did not wish repeated to the directors, it is admissible in evidence.

In a case of forgery it is not necessary to prove the legal existence of the bank intended to be defrauded; it is sufficient to prove generally an intent to defraud.

The omission in the jurat of the place where the depositions were taken is not material where the place is mentioned in the heading or margin and is otherwise certified to.

The fact that an indictment for embezzlement has been found against the prisoner in the State whence he fled does not prevent a demand being made for his surrender for forgery.

An alteration of a writing or "accountable receipt" made to prevent the discovery of a fraud previously committed is a forgery though no money was taken then. And so where a forgery is alleged to have been committed in a particular month it is not necessary to prove that the money obtained was taken by the accused in that month.

In proceedings for the extradition of a fugitive, evidence to contradict that of the prosecution is not admissible. The accused is entitled to show, only, that the offence charged is not one of the crimes mentioned in the treaty. *In re Debaun*, 11 L. N. 323, Que.; R. S. c. 142, s. 9.

681.—Defendant was found guilty on the first and third counts of an indictment, the first count of which charged him with uttering a forged cheque, and the last with uttering a forged order for the payment of money. The evidence was that he forged the name of the payee on the back of the cheque and obtained the proceeds, which he appropriated,

Held, the cheque when endorsed became an order for the payment of money to any one presenting it, and the conviction on the last count was sustained by the evidence.

McDonald, C.J., and Weatherbe, J., dissenting.

The first count was not sustained by proof of the forgery of the endorsement.

A question having been raised at the trial by demurrer as to the power of the court to try the defendant for an offence other than that for which he had been extradited was decided against the defendant at the trial, and it was

Held to be too late to raise the question by case reserved for the full court. *Regina* v. *Cunningham*, 6 Can. Law Times, 139, Nova Scotia; R. S. c. 152, s. 23. But see No. 167, *ante*.

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